2911

SUPREME COURT OF THE UNITED STATES.

No. 85.

THE STEAMER OREGON, ROGER A. HEIRN, MASTER AND PART OWNER, APP'T,

v.

JOSEPH ROCCA AND FRANCIS ROCCA.

APPEAL FROM THE CIRCUIT COURT UNITED STATES, FOR THE SOUTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Transcript from District Court,	1	3
Libel,	1	3
Process and Return,	8	6
Claim and Answer,	11	8
Restoration Bond,	19	12
Order for Commissions to take Testimony,	21	13
Deposition of William Twiford,	24	15
" John Bowline,	37	21
" Sam'l Augustus,	43	23
" Joseph Swift,	49	26
" Anthony Tyson,	51	27
Opinion of District Judge,	55	30
Decree of District Court,	64	34
Appeal and Appeal Bond,	65	34

	Original.	Print.
Order transferring to Milledgeville, Ga.,	72	38
" " Savannah, Ga.,	73	38
Defendants' Testimony.		
Direct Interrogatories,	76	40
Cross do.,	83	43
Deposition of S. E. Burrill,	90	46
Geo. Blakesley,	119	56
Wm. F. James,	143	65
Robert Otis,	161	71
Complainant's Testimony.		
Interrogatories to Witnesses,	184	79
Cross Interrogatories,	191	82
Deposition of A. Farris,	199	85
" Peter Rosencrantz,	213	90
" Charles Williams,	226	94
" Fred. Sheffield,	238	99
" Henry Toulmin,	244	101
Order Affirming Decree,	253	104
Appeal Bond,	254	105
Clerk's Certificate,	256	105

Pleas had before the Hon. the District Court of the United States, for the Southern District of Alabama, at a term thereof begun and held in and for said District at Mobile, on the second Monday in December in the year of our Lord one thousand eight hundred and fifty, before his Honor, John Gayle, Judge of said county.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMER OREGON et al.

Be it remembered that heretofore, to wit, on the thirty-first day of December, in the year of our Lord, one thousand eight hundred and forty-nine, Joseph Rocca and Francis Rocca filed in said Court their libel against the Steamer Oregon, her tackle, apparel, and furniture, for damages, etc., in the words and figures following, to wit.

United States of America, Southern District of Alabama, *ss.*

Libel.

To the Hon. John Gayle, Judge of the District Court of the United States, within and for the Southern District of Alabama:

The libel and complaint of Joseph Rocca and Francis Rocca of Genoa, in the Kingdom of Sardinia, merchants and co-partners, doing business together, under the name, style, and firm, of Fratelle Rocca, against the *the* Steamer Oregon, whereof R. A. Heirn is master, her tackle, apparel, and furniture, and appurtenances, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the said Joseph Rocca and Rocca, copartners as aforesaid, alleged and articulately propound as follows.

First, that on or about the eighth day of September, 1849, the schooner Wm. Ozman, whereof Wm. Twiford was then master, was at the port and at the City of Mobile, loaded with one hundred and forty bales cotton, and destined down the Bay of Mobile to the Sardininian ship Maria Teresa, which was lying at anchor at what is known as the Lower Fleet, about twenty-seven miles below the said city. That twenty-eight bales of said cotton was stored in the hold of said schooner, and the remainder, one hundred and twelve bales, was on deck. That the said schooner William Ozman was at the time, and so continued up to the time of the collision in the next article mentioned, a tight, stanch, and well-built vessel, of the burthen of fifty-five tons, or thereabouts, and was then completely rigged, and sufficiently provided with tackle, apparel, and furniture, and then had on board and in her service, a mate and two mariners, besides the said

master, and a negro boy, cook, which was a full complement of hands to navigate the said schooner in the business in which she was then employed and the destination aforesaid.

Second. That on the said eighth day of September, 1849, at one o'clock A. M., the said *said* schooner Wm. Ozman, loaded and provided and manned as aforesaid, sailed from the City of Mobile, on her aforesaid destination, down the Bay of Mobile, with a northerly wind and under her mainsail and jib, and so continued until she got out of the "Pass," when the mainsail and jib were taken in, and she proceeded before the wind under her foresail alone, steering about south, until about three or four o'clock on the morning of the same day of September, 1849, when she had reached a point about two miles below Dog River, at which time and place, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable Court, the master and hands of said schooner discovered the said Steamer Oregon, whereof the said R. A. Heirn then was and now is master, about two miles south of said schooner, coming up the Bay, on her passage from New Orleans to Mobile, steering about north and under the usual head of steam; and that as soon as the position and course of the said steamer was known, the course of the said schooner was changed southwest, so as to pass to the westward of said steamer, which she would have done had the said steamer kept on her course, but when within about fifty yards of the said steamer, the said steamer changed her course about two points west, and in a direction to cross the bows of the said schooner. That seeing the change of direction of the said steamer, and that a collision would take place if both vessels proceeded on their courses, the master and crew of said schooner, with loud and audible voices, called to the officers and crew of said steamer, that she was going to run into them; and at the same time the helm of the schooner was put hard down, for the purpose of passing to the eastward of the said steamer, but the foresail of the schooner jibing prevented her from going sufficiently to the eastward to clear the steamer; and notwithstanding the said schooner was plainly visible to the officers and crew of the said steamer, if they had been on the look-out long before the said steamer changed her course, and there was ample time and room for said steamer to pass said schooner, and notwithstanding the warning given by the officers and crew of the said schooner to the said steamer as aforesaid, and notwithstanding after said warning the said steamer had time to slow or stop her engines, and should have done so, yet the said Steamer Oregon kept on her way without stopping or slowing her engine, and either intentionally, or most grossly and negligently, under a full head of steam, ran with great force and violence upon the said schooner, the starboard wheel-house of the said steamer striking the bowsprit, and her guard near the wheel-house of the said steamer the stem of said schooner, whereby the bowsprit of said schooner was unshipped

and carried away, and the bows of said schooner stove in, and the said schooner otherwise greatly damaged and left in a sinking condition. That as soon as the said collision happened, and its effects were seen by those on board of said schooner, they hailed the said steamer for assistance, but the said steamer wholly disregarded them and passed on. That the force of the said collision turned the head of the schooner round to the northwest; that the master and crew of the said schooner immediately endeavored to get said schooner towards the shore, but before they could reach shoal water she sunk, and when she struck the bottom she rolled over on her side, and the cotton on deck rolled off into the water. That the wind was fresh from the north, and the master and crew of the schooner were wholly unable to save the said cotton, and the same became and was by reason of said collision wholly damaged and lost.

Third. That at the collision mentioned in the next preceding article, it was a clear star and moonlight night, without cloud, fog, or mist, and the day was just beginning to break; vessels could be plainly seen at a distance of at least two miles. That if the schooner was not seen by those on board said steamer, it was their own fault. That it was impossible for the said schooner to avoid the said collision.

That when she discovered the steamer, she purposely bore away towards the southwest, and that the steamer should have kept on her course, or turned more to the east. That the collision happened from the steamer improperly changing her course more to the west, and keeping on said course without stopping, wholly regardless of the position and proximity of said schooner, and was the result of willfulness or gross carelessness, negligence, and unskilfulness on the part of the officers and crew on board said steamer.

Fourth. That before the said steamer changed her course more to the west, as in the preceding article is mentioned, the master of said steamer plainly saw said schooner, as he has admitted since the collision took place.

Fifth. That the one hundred and forty bales cotton, on board the said Schooner William Ozman, and which was lost by the collision in the preceding article mentioned, was, at the time of said collision and loss, the property of the libellants, and of great value, to wit, of the value of seven thousand two hundred and ninety-four dollars and seventy-eight cents. That a portion of said cotton was picked up and saved in a damaged state, and sold under the direction of the Port Wardens of Mobile. That the nett proceeds of said sale, after deducting salvage and charges, was twelve hundred and ninety-five dollars and eleven cents, which, deducted from the value, leaves a nett loss on said cotton, of five thousand nine hundred and ninety-nine dollars and sixty-seven cents, which is the damage sustained by these libellants, by reason of the said collision in the preceding article mentioned.

Sixth. That all and singular the premises are true, and are within

the admiralty and maritime jurisdiction of this Hon. Court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and proofs to be by them exhibited in this cause. Wherefore the libellants pray that process in due form of law, according to the course of Courts of Admiralty, and of this Hon. Court, in cases of admiralty and maritime jurisdiction, may issue against the said Steamer Oregon, her tackle, apparel, appurtenances, and furniture, and that all persons having, or pretending to have, any right, title, or interest therein, may be cited to appear and answer all and singular the matters above articulately propounded, and that this Hon. Court will be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain. And also to condemn the said Steamer Oregon, her tackle, apparel, appurtenances, and furniture, and all persons intervening for their interest therein, in costs.

PHILLIPS & SEWALL,
Proctors for Libellants.

Southern District of Alabama, *ss.*

J. Bell, Jr., being duly sworn, saith, that he is the agent of the libellants, informed of the facts and circumstances of this case, and that the material allegations of the above libel are true, to the best of his knowledge, information, and belief.

J. BELL, JR.

Subscribed and sworn to, Dec. 31st, 1849, before me,
JOHN FITTS,
Clerk.

I hereby acknowledge myself security for costs in this case.
H. A. SCHROEDER.

MOBILE, Dec. 31st, 1849.

Filed Dec. 31st, 1849.

JOHN FITTS,
Clerk.

Afterwards, to wit, on the thirty-first day of December, 1849, the following writ of seizure was issued out of said Court, to wit:

United States of America, District Court of the United States for the Southern District of Alabama.

The President of the United States; to the Marshal of said District, greeting:

You are hereby commanded that you attach, seize, and safely keep the Steamer Oregon, her tackle, apparel, and furniture, whereof R. A. Heirn is master, and now lying at the Port of Mobile, so that you have said Steamer Oregon, her tackle, apparel, and furni-

ture, before the Judge of the District Court of the United States, at a term of said Court, in and for the Southern District of Alabama, at Mobile, on the third Monday of January next, to answer the libel of Joseph Rocca et al. Herein fail not; and have you then and there this writ.

Witness, the Hon. John Gayle, Judge of the Court aforesaid, this first Monday of May, A. D. 1849. Issued the thirty-first day of December, 1849.

JOHN FITTS,
Clerk, So. Dis. Ala.

Marshal's Return.

Rec'd Dec. 31st, 1849, and on same day executed the same by seizing and taking into my possession the Steamer Oregon, her tackle and apparel, &c., and serving a copy of this writ of seizure upon Capt. Heirn.

C. BINGHAM,
U. S. Marshal.

Afterwards, to wit, on the thirty-first day of December, A. D. 1849, the following writ of Monition issued out of the Clerk's office of the Court aforesaid, to wit.

United States of America, District Court of the United States, for the Southern District of Alabama.

The President of the United States, to the Marshal of said District greeting:

Monition.

Whereas, Joseph Rocca et al. have exhibited their libel in the Court aforesaid, stating that the Steamer Oregon, while performing voyages on the high seas within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this Hon. Court, to wit, in the Bay of Mobile, became indebted to said Libellants for damages caused by a collision with the Schooner William Ozman, whereof the said Libellants are owners, in the sum of five thousand nine hundred and ninety-nine dollars and sixty-seven cents. And whereas the Judge of the Court aforesaid has ordered the third Monday of January next, for all persons interested to be cited to appear at the place of holding said Court, at the City of Mobile, and show cause if any they have why judgment should not pass as prayed.

You are therefore hereby commanded to cite and admonish all persons having any right, title, or claim, in and to the said Steamer Oregon, her tackle, apparel, and furniture, by publicly affixing (showing) this monition on the most public part of said Steamer Oregon, for some time, and by leaving with the master of said

Steamer Oregon, a true copy thereof, to be and appear at the time and place aforesaid *at the place aforesaid;* and also to attend upon every session to be held there, and from thence until a definite sentence shall be promulgated in said business inclusively, if any shall think it their duty so to do; to hear, abide by, and perform such judicial acts as are required to be done in the premises, and further to do what unto law and justice shall appertain, and whatsoever you shall do in the premises certify unto the Court aforesaid, at the time and place aforesaid, together with these presents.

Witness the Hon. John Gayle, Judge of the District Court aforesaid, this second Monday in December, in the year of our Lord 1849.

Attest, JOHN FITTS,
Clerk, So. Dist. Alabama.

I waive advertisement in the above case.

R. A. HEIRN.

Marshal's Return.

Received 31st December, 1849, and on same day executed this monition by nailing a copy on the most conspicuous part of the Steamer Oregon, and delivering a copy to Capt. Heirn.

C. BINGHAM,
U. S. Marshal.

And afterwards, to wit, on the fourth day of January, A. D. 1850, came R. A. Heirn, master and part owner of the said Steamer Oregon, and filed in the said Court his claim and answer in the words and figures following to wit.

Claim.

The State of Alabama, Mobile County. Before me, Clerk of the District Court of the United States, for the Southern District of Alabama, came Roger A. Heirn, and maketh oath and saith that he is master of the Steamboat Oregon, now lying in the Port of Mobile, and a part owner of the same, and that he intervenes in the suit of Joseph Rocca and others in the said District Court, as well for his own interest as the interests of all others interested in the said boat. That he is fully authorized to intervene on account of the other owners, and that his claim as owner is true and bona fide. He further states that at the time of the arrest he was lawfully in possession as master.

R. A. HEIRN.

Sworn to and subscribed before me, 3d January, 1850.

JOHN FITTS,
C'k.

We acknowledge ourselves to be bound under John Fitts, Clerk of the District Court aforesaid, for the payment of all costs and expenses which shall be awarded against the claimant, by the final decree of the said District Court, in the case above named, or on appeal by the Appellate Court.

Witness our hands and seals, 3d Jan. 1850.

Signed, R. A. HEIRN, SANDS & Co.

Answer.

The District Court of the United States, Southern District of Alabama.

To the Hon. John Gayle, Judge of the District Court of the District aforesaid.

The answer of R. A. Heirn, part owner and master of the Steamboat Oregon, who intervenes for himself and the other parties in interest to the libel exhibited in said Court by Joseph Rocca and Rocca, partners, by name of Fraternelle Rocca, against said boat, her tackle, &c., &c.

First, That the defendant, at the date of the arrest of said boat, her tackle, &c., &c., was part owner of the same, and lawful bailee as Master, and authorized to represent the other parties in interest.

Second, The defendant admits that at the date aforesaid, the schooner mentioned in the libel, was in the Bay of Mobile, loaded with cotton. Whether bound as stated in the libel, this defendant can only answer from information which corresponds with the libel. This defendant does not know the burthen of said vessel or its equipments, and does not admit the allegations of the libels in these particulars, nor does he admit that the vessel was tight, staunch, and strong, but on the contrary avers, she was old, insufficient, and nearly worn out.

Third. This deponent in answer to the third article says, that about two o'clock in the morning, the said vessel was in the Bay of Mobile, near Dog River, at the date specified, more than one mile and a mile and a half distant from the line of voyage to the place of her destination in the fleet, and was clearly visible to the respondent, who was on deck in command of his boat with the principle pilot in the wheel-house, with steersman and two watchmen on deck; he was then on his voyage from New Orleans to Mobile.

The said steamer was on the west side of the Bay, chosing that line to avoid the line of voyage between the city and the fleet below the city, and upwards of a mile to the west of that line.

The said schooner at the time she was seen, was moving on a course entirely apart from the course of the steamer, and involving no danger of a collision. The respondent states there was but one man visible on deck, and he was steering, with two or three tiers of cotton on deck; that while the schooner was proceeding on a course

which, if followed, no collision could have taken place, the vessel was suddenly wheeled around and run upon the steamer amidships; that this movement of the vessel was produced by the act of the steersman of the schooner, and jibing the foresail over, and rounding the vessel. This respondent states, that before this movement in the schooner was made, there was no change of the course or direction of the steamer; that if the schooner had maintained her course, none would have been required; and that after this movement, no precaution could have been taken to avoid collision. This movement of the schooner was sudden, and while the vessels were near together. This, respondent states, that the steamer bore off as far as she could after the action of the vessel was perceived.

This respondent states, that no portion of the steamer struck the schooner, but that the jib-boon of the schooner ran into the steamer, and as she wheeled away, it was broken, and started, as he since learns, the old and rotten timbers of the schooner.

Respondent further states, in reference to this article, that he does not admit that any alarms or cries were made on the schooner before, or any claims of assistance after the collision, but on the contrary, this respondent states, that the said vessel seemed, when first seen, to be going on a steady course, not in the way of the steamer, when a sudden change was made in her course, and she was thrown on the track of the steamer.

This respondent supposes that the steersman of the schooner did not see the steamer until she was near her, and being suddenly aroused, changed the course of his vessel, without knowing what he was doing. This respondent states, that the blow given to his boat was not severe; that he did not see that the schooner was affected; that he made a call to them for information, but obtained no answer; and that he saw the schooner going off apparently without injury, and so he did not render aid, which would otherwise have been cheerfully rendered. This deponent does not admit the allegations of the libel, as to the course of the voyage of the schooner, nor of the changes made in the course, nor that a warning was given, nor that the officers of the steamer were malicious or careless; but in regard to the last allegation, he says, that his boat was moving cautiously, as is habitual at night in its management, and it was not necessary, nor could it have been beneficial to have altered her speed.

In answer to the fourth and fifth articles, this respondent states, that the night on which the collision occurred, was clear and star light, and the moon was up in her last quarter. That the collision occurred about two o'clock in the morning, in the waters of Mobile Bay; that the schooner was plainly and distinctly perceived by this respondent, and by the pilot of his boat, and the different persons on duty. This deponent wholly denies, that it was impossible for the

schooner to avoid the collision when she discovered the steamer, unless the fact is, that the steamer was discovered after the sudden and unaccountable change in the direction of the schooner took place. This respondent has supposed that the steersman of the schooner may not have seen the steamer till she was near by, and in the confusion and hurry of his mind, may have given the false direction to his vessel, without exactly knowing what he was about.

This motion was sudden, unexpected, and threw the head of the vessel directly upon the steamer at right angles to it, and the only motion of the steamer consequent upon this act of the schooner, was to bear further off, and to diminish the force of the blow.

That had the steamboat continued her course without reference to this act of the schooner, the whole power and force of the schooner would have been expended upon her; as it was, the blow was light, the steamer receiving but one wound; but under any other circumstances the damage would have been greater.

If the schooner had been tight, staunch, and strong, the damage to her would have been inconsiderable, but she was weak, rotten, and incapable. Respondent alleges, that he is informed and believes, that the master of the said schooner, when she left Mobile, was carried aboard drunk, and he says that only one person was visible during that time.

This respondent states, that said vessel was not a regular lighter, but a water boat, and that the lading was entirely too great for her capacity.

To the sixth article, respondent answers, that he does not know, and cannot answer in reference to the allegations in this article, and does not admit the same; all of which this respondent submits to the Court, and is ready to prove and maintain by proof, to be taken in this cause. And now having fully answered, this respondent prays that the libel may be dismissed, and the libellants taxed with the costs.

CAMPBELL and CHANDLER,
For Def'ts.

The State of Alabama, Mobile County.

Before me, Clerk of the District Court of the United States for the Southern District of Alabama, came R. A. Heirn, who maketh oath and saith, that this answer is true in substance and matter of fact.

R. A. HEIRN.

Sworn and subscribed before me, 4th January, 1850.

JOHN FITTS,
Clerk.

Restoration Bond.

United States of America. District Court of the United States, for the Southern District of Alabama.

Know all men by these presents, that we, R. A. Heirn, Charles Le Baron, C. L. Le Baron, are held and firmly bound unto Joseph Rocca, and Francis Rocca, in the just and full sum of twelve thousand dollars, for the payment of which well and truly to be made, we bind ourselves, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents, sealed with our seals, and dated this 5th day of January, in the year of our Lord one thousand eight hundred and fifty. The condition of the above obligation is such, that whereas the said Joseph Rocca and Francis Rocca have exhibited their libel before the Court aforesaid, setting forth and alleging that the Steamer Oregon, which, performing voyages on the waters of the sea, within the jurisdiction of the said Court, became indebted to the said libellant, in the sum of

And whereas, the said steamboat, her tackle, apparel, and furniture, have been attached, and are now in custody, &c., to answer said

And whereas, it has been ordered that the said steamboat, her tackle, apparel, and furniture, be restored to her master or owners, on their giving bond with good security to have the said steamboat forthcoming to abide the decree of this honorable Court. Now, therefore, the condition of this obligation is such, that if the above bound R. A. Heirn, Chas. Le Baron, and C. L. Le Baron, or either of them, shall have the said steamboat, her tackle, apparel, and furniture in her, and their present condition, before the District Court aforesaid, at a term thereof to be held on the third Monday of January, inst., forthcoming, to abide by and perform such decree or judgment as his honor may at any time pronounce in the premises, and shall well and truly pay unto the said Joseph Rocca, and Francis Rocca, all such sum or sums of money as the said District shall or may decree unto them in the premises, together with all costs and damages, then this obligation to be void, otherwise to remain in full force and effect.

R. A. HEIRN, [L. S.]
CHAS. LE BARON, [L. S.]
C. L. LE BARON, [L. S.]

Signed, sealed, and delivered, in presence of

Afterwards, to wit, on the fifth day of January, A. D. 1850, the following Writ of Restoration issued out of the said Court, to wit:

Writ of Restoration.

United States of America. District Court of the United States, for the Southern District of Alabama.

The President of the United States to the Marshal of said District, Greeting: You are hereby commanded that you restore the Steamer Oregon, her tackle, apparel, and furniture, to her master, and how you execute this precept make known to the Judge of the District Court of the United States, at a term of said Court, to be held in and for the Southern District of Alabama, at Mobile, on the third Monday in January, 1850; herein fail not, and have you then and there this writ.

Witness, the Hon. John Gayle, Judge of the Court aforesaid, this second Monday in December, 1849, issued the fifth day of January, 1850.

Attest, JOHN FITTS,
Clerk So. Dist. Ala.

Marshal's Return.

Rec'd, 5th Jan., 1850, and executed same day, by restoring the Steamer Oregon, her tackle, apparel, and furniture, to R. A. Heirn, her master.

C. BINGHAM,
U. S. M.

Afterwards, to wit, at a special term of said Court, begun and held in and for said District, at Mobile, on the 21st day of January, A. D. 1850, the following proceedings were had in said Court, to wit:

Order.

On application of respondents' proctors it is ordered by the Court that this cause be continued until the next regular term of the District Court, and that a commission issue to take the depositions of Lorenzo Thompson and James McGee, by interrogatories, on giving ten days' notice, and on application of libellants' proctors, it is further ordered, that the depositions of William Twiford, John Broline, William Pattison, Samuel Augustus, William Thompson, and —— Jackson, be taken on giving ten days' notice.

Continuance. Order.

And afterwards, to wit, at a term of said Court begun and held in and for said District, at Mobile, on the first Monday of May, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had, to wit: on motion of the respondent, it is ordered by the Court that this cause be continued. December Term,

1850; ordered, that the testimony in the cause be published. The testimony on file in this cause is as follows, to wit:

District Court of the United States for the Southern District of Alabama. In Admiralty.

JOSEPH ROCCA and FRANCIS ROCCA, Libellants,
v.
THE STEAMER OREGON, and R. A. HEIRN, Master, Respondent.

Testimony.

Take notice, that on Monday, the fourth day of February next, at the office of Alexander McKinstry, Esq., in the City of Mobile, and before the said McKinstry, as U. S. Commissioner, we will proceed to take the depositions of William Twiford, John Broline, Samuel Augustus, William Thompson, William Patterson, and —— Jackson, for the libellants, in the above entitled cause, in pursuance of an order made by the Judge of the District Court in said causes; and the examination of said witnesses, if not completed on that day, will be continued from day to day thereafter, until completed, when and where you may attend and cross-examine the witnesses if you see fit.

PHILLIPS & SEWALL,
Proctors for Libellants.

To Messrs. Campbell and Chandler, Proctors for Respondents.

We acknowledge service of this notice, 22d January, 1850.
CAMPBELL & CHANDLER,
Def'ts Att'ys.

JOSEPH ROCCA et al.
v.
STEAMER OREGON.

Release.

We hereby release and relinquish all and every claim that we have or may hereafter have on Anthony Tyson, the witness, and pilot on the Steamer Oregon, on acct. of the collision between the Steamer Oregon and the Schooner William Ozman, that happened the subject of this suit, and on account of any loss that said schooner and its owners may have sustained on acc. of said collision, and from any damage that may arise from any suit between the said plaintiffs and the owners of the said Oregon, and from all costs, and from all claims and demands, the said Oregon and its owners have on said Tyson.

Witness our hands and seals this 3d May, 1850.

CHAS. L. REYNOLDS, [SEAL.]
As Att'y for all the Owners.

R. A. HEIRN, [SEAL.]
JAMES L. DAY, [SEAL.]
JOHN GEDDES, [SEAL.]
ROBERT GEDDES, [SEAL.]
ABRAHAM WOLF, [SEAL.]

I, Alexander McKinstry, do certify that this is the release produced by Anthony Tyson, on his examination before me, and which was objected to by Messrs. Sewall and Gibbons, as being insufficient, and is referred to by me in the recital in his deposition, as the annexed release being exhibited by the witness.

Witness my hand and seal.

[SEAL.] ALEX. McKINSTRY,
Comm'r.

In a certain cause pending in the District Court of the United States of America, for Southern District of Alabama, at Mobile, in admiralty, wherein Joseph Rocca et al. are libellants, and the Steamer Oregon, &c., and R. A. Heirn, are respondents, and also Robert Turner and William Twiford are libellants and interveners, and Steamer Oregon and R. A. Heirn are respondents, I, Alexander McKinstry, Comm'r for the taking of affidavits and bail to be used in the United States Courts, under the acts of Congress, by virtue of the appointment of the Hon. the Circuit Court of the United States for the Southern District of Alabama, have called and caused William Twiford, John Broline, Samuel Augustus, Joseph Swift, Anthony Tyson, to come before me at my office, at the City of Mobile; at the request of the respondents, the said Twiford was examined separately and apart, the said respondents having objected to the competency of the said Twiford. The objection was overruled, and the said Twiford having been duly and carefully cautioned, examined and sworn, did depose and say, and doth depose and say, that he was master of the schooner William Ozman, when the occurrence took place; that he took a load of cotton on the evening of the 7th; the tide was very low at the shipper's press; that he took in one hundred and forty bales of cotton; that when the vessel was loaded she was aground; that they worked until twelve or one o'clock that night, before they succeeded in getting the schooner off; that the schooner proceeded down the bay with a north wind under two jibs and mainsail, until he got down below the pass, when he took in his jibs and mainsail, and set the foresail, and so proceeded down the bay under the foresail; between two and four o'clock made a steamboat bearing south; that he then altered his course south by westward, so as to go west of the steamboat; that when the steamboat was first discovered,

she was distant about one mile or one mile and a-half; that he kept on that course until, according to his judgment, the steamboat would have cleared the schooner one hundred yards to the eastward; all at once she shifted her course across the bows of the schooner. When the steamboat made this change, she turned to the westward; that the steamboat was about fifty yards distant when she changed her course; that as soon as he observed that the steamboat had changed her course, he ordered the man at the helm of the schooner to put her helm hard down, meaning thereby, hard down to the starboard, but the words "to the starboard" were not spoken, though that was the customary mode of giving the order; that the foresail was on the starboard side, and had been so ever since the schooner had changed her course. When the order was given the sail jibed to the larboard side of the vessel; that he was on the top of the cotton, and when the sail jibed he had to fall down on his stomach to avoid being knocked down by the boom of the sail; that after the sail had jibed he arose to his feet, and as he arose, the steamboat was coming in contact with the jib of the schooner, the starboard side of the steamboat striking the jib-boom of the schooner, just forward of the wheelhouse, by the gangway; that the effect of the blow was to carry away the bowsprit, the nightheads, and to split the schooner open down to the water's edge; that he hailed to the steamboat to take him off before he she got clear, because the schooner was sinking; that halloed manfully as loud as he could, several times; that in about twenty minutes or twenty-five minutes, the schooner filled with water; that the schooner did not sink; that he made sail on her and turned her in towards the shore, and proceeded towards the shore, until the schooner grounded—as soon as the schooner grounded she rolled over on her beam ends, and the deck load tumbled off; that when the schooner filled with water the buoyancy of the cotton prevented the schooner from sinking, but the water was some two feet above the deck; that it was about three quarters of an hour from the time of the collision until the schooner grounded; that the distance from the place of the collision to the grounding was about a mile; that it was tolerable rough when the collision occurred and the wind kept increasing until day; at daylight he saw but one sail in the bay, and that was a schooner at anchor about five miles down the bay; that he, with the cook and three men took a boat and went down to the schooner at anchor; that the schooner took them on board and brought them up to town, and when the cotton tumbled off from the schooner, the cotton floated away, and they were unable to save any of it; that they found it very hard to save themselves, as their boat when going down to the vessel that brought them to town came very near filling with water two or three times; that from the time this deponent first saw the steamboat, until the time of the collision, he was all the time on top of the cotton, that is, the highest part of it, between the foremast and the mainmast on the look out.

When deponent first got out off the pass, and the foresail had been set, deponent told one of the crew to steer the schooner about south, and the balance of the night lay down, but discovering the steamboat, he told them not to lay down until the schooner had passed the steamboat; that deponent and the mate were on top the cotton, and one of the men "Francis," was on the forecastle; that at the time he ordered the helm of the schooner to be put down, the steamboat was from thirty to fifty yards distant from the schooner; that if the helm of the schooner had not been moved at all, the steamboat would have come into collision with the schooner necessarily from their positions at the time that the order was given; that before deponent gave the order to put the helm down, he halloed as loud as he could halloo to the steamboat that she would run into the schooner; that he hallooed three or four times as loud as he could halloo; that the steamboat still kept on her course and never stopped at all.

That the object of the deponent in giving the order to put the helm hard down, was that he saw that the steamboat would necessarily come into collision with the schooner, and the only way to avoid it, was to put the helm of the schooner round to the eastward; that the time between giving the order to put the helm down and the collision, did not exceed one minute; that the boat did not stop her engines at all nor did the deponent see that the steamboat slacked her motion in the least; that at the place where the collision took place, the channel was about eleven miles wide, and there was a plenty of room for the steamboat to have passed, either to the westward or to the eastward of the schooner; that it was a beautiful moonshiny night; deponent could see the houses on each side the Bay; that deponent was half owner of the said schooner at the time of the collision; that Robert Turner owned the other half; she was about fifty-four tons burthen; that deponent, William Proline, the mate, William Thompson, Samuel Augustus, and a black man named Peter, who was the cook, constituted the crew of the schooner; that the said schooner was perfectly tight and staunch at the time. Deponent had run on her three years; that she was sufficiently tackled and apparelled, and had a plenty of everything; that in the summer of 1848, the said schooner had new upper works and new stern put in her, by one Mr. Foster, in the City of Mobile; that the costs of said repairs were between thirteen hundred and fourteen hundred dollars; that this was a thorough repair of said schooner, everything was done that was necessary; that the deponent has had, and carried on the said schooner down the Bay, one hundred and eighty bales cotton at a time; that the load that was on the schooner at the time of the collision, was destined for the Sardinian ship "Maria Theresa;" that twenty-eight bales was in the hold of the vessel, and the remainder upon the deck, and a third or a half tier was between the masts; that for the last fourteen years, deponent has been accustomed to navigation of Mobile Bay; that one year and a half of

that time, he has been engaged in the lightering of cotton down the Bay, and the balance of the time in carrying of water to the shipping; that deponent is accustomed, whenever he is going down the Bay at night, if the wind blows from the north, that he keeps his vessel to the westward; that he does not know of any particular track that lighters pursue in going down the Bay; that his motive for taking the course to the westward was, that if he should be compelled to have occasion to anchor, the trough of the sea would be too rough, unless the vessel was well to the westward, and that occasionally, lighters have to anchor, because it is too rough to lay alongside of the vessel to which they are bound; that deponent used every precaution in his power to avoid the collision; that he had not been below deck five minutes in the time between leaving the wharf at Mobile and the collision, and had been there from the time that the vessel left the Pass. That the value of the schooner, her tackle, apparel, and furniture, at the time of the collision, was two thousand dollars; that there was no insurance upon her; that deponent took one other schooner, and went down to save the said schooner Ozman, if possible; that it blew very fresh, and they broke their tackle, and they were obliged to abandon the said Schooner Ozman; that she was afterwards sold as she lay, and at auction for hundred and ten $\frac{1}{100}$ dollars; that she was sold by the Jones' and bought by one Rosencrantz; that the sails and rigging brought one hundred dollars in addition; that the Agent of Messrs. Isaac Bell, Jr. & Co., Mr. H. Brown, delivered the cotton to this deponent.

That here the libellants close their examination, and the respondents cross-examined.

This deponent had been in the schooner for three years; that she was seven or eight years of age; that she was a lighter before deponent bought her; that after he bought her she was used as a water-boat; that the only alteration that was made to convert the schooner from a lighter to a water-boat was to put a tank in her; that by taking the tank out, her construction was the same as any other lighter in the bay; that the tank was out and the bulk-heads down at the time that the collision took place; that the schooner was about one mile below Dog River Bar when he first saw the steamboat; that it was between two and three o'clock, as near as he could come at it; that he first saw the steamboat right ahead, while the schooner was steering south; that there was no light set in the schooner.

Q. Why did the vessel come head to the westward, with the helm to the starboard?

A. The foresail jibed before the man got the helm down, as the schooner was dead before the wind; that the schooner steers with a tiller; that at the time of the collision, the schooner was heading south by west, half west, or thereabouts, and the steamboat, by the collision, threw the head round to the northward; that at the time the deponent first saw the steamboat, the steamboat was heading to

the northward; that the schooner was about thirty or forty yards distant from the steamboat when she changed her course; that before she had been heading north she changed her course to the westward; that when the steamboat changed her course, the schooner was heading about south by west, half west; that there would have been a collision if the vessels had kept their course after the steamboat had hauled to the westward, as above stated; that if the course of the vessels had not been changed, the steamer would have struck the schooner in her fore rigging, the steamboat striking with her bow; that by the jibing of the foresail, the course of the schooner was changed more to the westward; that it was not a minute from the giving of the order to put the helm starboard to the time the foresail jibed; that it was between half a minute and one minute that the jibing of the foresail and the collision occurred; at the same time, or as near as could be, that the steamer struck the tip end of the jib-boom of the schooner, first the steamboat coming immediately in contact immediately forward of the wheel-house; that the deponent hallooed before the collision and before the sail jibed; that he did not see any one on board of the steamboat; that if the steamer had not changed her course towards the westward, the collision would not have occurred, as he believes, as the steamboat would have gone to the eastward, and the schooner to the westward, and passed each other at the distance of about twenty or thirty yards; that deponent did not halloo until the steamboat changed her course; that she changed her course suddenly; that the schooner's course was changed a point to the westward as soon as he discovered the steamboat; that this course was continued until he came near to the steamboat, when, as he saw that the steamboat continued to near the schooner, he then kept the schooner as far to the westward as he could bear without jibing; that the course of the steamboat was not changed from the time deponent first saw her, until the change to the westward as aforesaid, so far as he knew; that previous to the change he saw but one light on the steamboat; after the change he saw two lights; that after the collision the steamboat did not stop, but passed on; that he did not see any one on the steamer after the collision; that after the hallooing to the steamer, the deponent turned to his schooner to see what he could do to get her into the shore; that the schooner filled with water in about twenty or twenty-five minutes; that it was about ten minutes before the vessel got under headway towards the shore; that it was about ten or fifteen minutes after this before the schooner was filled with water, and it was about half an hour after the schooner filled with water that she grounded; that the hold of the vessel was filled with water; that the sea was rough, the wind was high and increasing; by daylight it was blowing hard; day was just breaking when the schooner grounded; that the sun was about one hour or three-quarters of an hour high when they left the schooner in the little boat; that they got in the boat a little

after sunrise; that from the time the schooner struck the ground until they got into the boat, they had hold of the rigging with his feet on the mast; that the water was eleven or twelve feet deep where the vessel grounded; that the cotton was all off from the deck by between daylight and sunrise; that a good deal of the cotton was picked up in a damaged state; don't know how many bales; that the schooner General Shields was the schooner on which they came to town; it was about eight o'clock when they got aboard of her; that twenty-six of the bales which were in the vessel's hold remained there; two of the bales floated out; that the hatches were not barred, so that when the water is on the deck they came off; that the sail that was hoisted to get the vessel to the shore was a gaff-topsail hooked on to the jib halyards, and tacked down to the hausepipe; that the larboard hawsepipe was broken off; that the bowsprit was unshipped by starting the knight heads; that the flying jib-boom was only sprung; that the bowsprit shrouds on the larboard were gone; that deponent had been drinking somewhat, but not so as to make him intoxicated; that he had been somewhat merry, but not so but that he knew how to attend to his business; that he commenced drinking in the morning, and the last glass that he took was about four o'clock in the evening; that he drank as many as he thought he could safely carry; that although he had been drinking, he was not intoxicated; that after the last drink spoken of, he went home, took his supper, went to bed, took a nap, and went to his vessel; that it was about eleven o'clock when he reached the vessel; that he drank a glass about eleven or twelve o'clock at night; 'twas a glass of brandy punch; that the loading of the vessel was completed at about four o'clock in the afternoon; that deponent has not seen the crew drink but one glass, and that was after the cotton was all out of the press, but all of it was not in the vessel; the most of it was, that when the deponent returned to vessel, he found the crew on the wharf waiting for the tide; that he does not know of their drinking except as above; that he has not conversed with the witnesses about their testimony in this cause; that he only told them to tell the truth.

Re-examined by the libellants.

That the jibing of a sail on a vessel causes the bow of the vessel to turn to the opposite way from that towards which the sail jibes; that deponent was not confused until he saw there was no chance of avoiding the collision; that then he was scared; that deponent has been in the habit of drinking ardent spirits since he was a boy until recently, when he found he was censured in this matter for drinking; he joined the Sons of Temperance, and intends to stick to it; that he had not been drinking on the day before the collision any more than usual.

WILLIAM TWIFORD.

Sworn to and subscribed before me,

ALEX. M'KINSTRY,

Comm'r.

At the request of the respondents, the said Broline was examined separately and apart, and the said Broline being by me duly and carefully examined, cautioned and sworn, did depose and say, and doth depose and say. that he was mate on the schooner William Ozman, at the time of the collision with the steamer Oregon; that on the 7th day of September, 1849, the vessel was hauled up in the dock at the shipper's press to take in a load of cotton, of one hundred and forty bales; between one and two o'clock on the morning of the 8th we hauled the schooner out to the end of the wharf; this deponent took the helm. The mainsail and two jibs were hoisted, and shoved off from the wharf the deponent took the helm; that the wind was about the north, perhaps a little to the eastward; that the vessel proceeded under three sails; that in going through the "Pass" the schooner grounded on the north bank of the "Pass;" that the vessel got off; that at or about the upper part of Dog River, they discovered the Steamer Oregon; that deponent could only see the smoke; that by that the steamer appeared to be southward of us; that the steamer was then a mile and three-quarters or two miles distant; that the only sail that the schooner had on at that time was the foresail, the others having been previously lowered; that when this was done William Thompson took the helm, and he had it at the time when the steamer was first seen; that when the steamer was discovered the man at the helm was told to keep the schooner more to the west, so that the schooner might pass to the westward of the steamer. The sail was out on the starboard side, the wind was fresh; that this deponent did not notice the steamer any more; that after the vessel was turned to the westward for a time, the captain told them to keep the vessel steady; that deponent was on the forecastle seeing that the chains and anchor was ready, and did not notice the steamer until he heard Captain Twiford say that she had altered her course. Deponent then went up on top the cotton. Captain Twiford hallooed to the man at the helm to put his helm hard down; at the same time that he told the man to put his helm hard down the foresail jibed over; that deponent, the captain, and Samuel Augustus were all on top of the cotton; that this deponent and the captain hallooed as loud as they could to the steamboat to stop; that as soon as the helm was put hard down the foresail jibed to the larboard side for an instant and then swung back to the same side that it was before, bringing the head of the schooner towards the eastward from the course that the schooner was steering; that when deponent first saw the steamer near to the schooner, the steamer was about twice the length or twice and a half the length of the schooner distant; the schooner was at that time steering about south by east; that the schooner then ran into the steamer, striking the steamer back of the gangway and forward of the wheel-house, with the bowsprit of the schooner, and the bowsprit of the schooner striking the steamer that it took the bowsprit of the schooner out altogether, and that

opened the planks from the stern; that the steamer slewed the schooner up to the northward and westward before the schooner got away from her; that after the steamer got away from the schooner deponent went below to see the damage and found the planks all open forward, and found that the schooner would sink; that they then hallooed to the steamer to stop and take them off; that they halloed loud, but they could not see that the steamer stopped, but the steamer passed on. Deponent could not see whether the steamer stopped or not; that immediately afterwards they succeeded in getting the head towards the shore; that they threw off the cotton from the forward part of the schooner until they found that she continued to fill with water. That by the time that she reached a place where the water was shoal enough for her to touch bottom the vessel was filled with water; that when she grounded the keel touched first and the bows were then afloat; but as soon as she grounded, her head swung to the eastward, and the vessel turned over. That the wind all the time was fresh and increased towards morning; that the collision took place about one minute after Captain Twiford sung out that the steamer had changed her course; that if the schooner and the steamer had kept the course that they were then going the collision would have taken place, and the bow of the steamer would have struck the schooner somewhere on the larboard side; that the direction of the schooner was changed about one point and a half by putting her helm down; that deponent did not see any one on the steamer; that there was on board the schooner Captain Twiford, deponent, William Thompson, Samuel Augustus, and a negro boy, the cook; that all but the negro were on deck at and previous to the collision; that if the helm of the schooner had been a-port, instead of the starboard, it would have turned the head of the schooner to the eastward, and the collision might have been avoided, perhaps. Deponent says that if he had had charge of the vessel, he could not have avoided the collision; that when the captain came on board the schooner he was not drunk nor intoxicated; that he was sober; that he appeared as capable as usual; that deponent had been on the vessel fourteen days previous to that time; that they did not leave the wharf before one o'clock, because the vessel was aground, and they did not get her off until then; that Captain Twiford helped to get her off; that while deponent was at the helm Captain Twiford was on the cotton on the lookout; that nobody on board the vessel was under the influence of ardent spirits; that there was no liquor on board; that deponent drinks sometimes; that it was a fine bright night; that the vessel was tight; that the foremast was rotten and not safe to carry sail on; that a part of it was very much decayed; that the rest of the vessel was sound; that when Thompson took the helm the captain was on top to cotton on the larboard side; that Captain Twiford was the first person that spoke of discovering the steamer; that he continued on top the cotton until the time of the collision.

Here the examination closed, and the cross-examination commenced.

That deponent had been on the schooner but fourteen days; that he is not acquainted with the navigation of the bay; that the schooner was in the usual track followed by vessels going to the shipping; that there was but one ship in the bay, and she was laying to the eastward of where the collision took place; that when deponent left the helm the vessel was going about south; that at the time the captain sung out, the steamer had changed her course; that the steamer was going north by west half west, and the schooner was going south half west; that they were then distant about twice and a half the length of the schooner; that the putting the helm hard down caused the schooner to turn about one point and a half to the eastward; that the vessel would not mind her helm so well on of the jibing of the sail; that when the vessels came into collision the foresail of the schooner was out on the starboard side; that after the collision the schooner's head was to the northwest, and the steamer was more to the north; that at the time of the collision the head of the schooner was south by east; that the schooner ran into the steamer; that the course of the schooner was not altered until they found that they could not go the westward of the steamer; that deponent saw the captain drink two glasses of liquor that day; that about nine o'clock in the morning Captain Twiford was on board the schooner, again at eleven, again about three and remained until about five, and came on board again about eleven; that bowsprit did not break.

JOHN BROLINE.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY,
Comm'r.

Samuel Augustus, at the request of the respondents, was examined separate and apart, and the said Augustus, having been by me duly and carefully examined, cautioned, and sworn, did depose and say, and doth depose and say, that he was a deck hand on board the Schooner William Ozman; that the schooner left Mobile on the 7th, between one and two o'clock in the morning; that Captain Twiford, Mr. Broline, Mr. Thompson, and this deponent, and the cook, a negro boy; that we kept under way under a flying jib and mainsail until the schooner got out of the Pass; that after the schooner got out of the Pass, took in the headsail and mainsail and furled them, and set the foresail; that after the foresail was set, deponent bailed the boat out; that deponent saw a steamboat ahead; that captain asked the hands that were forward if we had seen the steamboat; that the hands told him, yes; that the captain then told the man at the helm to keep her off south by west; that the vessel continued in that direction for about five or ten minutes, calculating that the

steamer would continue in her course, and the steamer would pass at the distance of twenty yards, and the steamer would have a wide berth, the schooner would pass the steamer to the westward; at this time the foresail was on the starboard side; the wind was about north; very strong breeze; that when we came to observe how the steamer was steering, it was found that she crossing the bows of the schooner; that the captain sung out to stop the steamboat; she was then about ten or fifteen yards off from the schooner; that he hallooed loud enough for any one to have heard him; that after Captain Twiford saw that the steamer was getting so near to the schooner, and that he saw no one on board of her, he then sung out the man at the helm of the schooner to put his helm down; that when he put his helm down, the foresail jibed over from keeping her off so far before; by that time the steamboat struck; M was then in the steamboat; that the steamer struck the schooner on her larboard bow, forward of the fore rigging; that the forward part of the steamer, just forward of the wheelhouse near the gangway, struck the schooner; that the steamer kept her way on; that the captain of the schooner sung out to stop and assist us; that the steamboat did not stop at all; kept right on. After the captain found that the schooner was in a sinking condition, he commenced to heave the cotton overboard to try to lighten the schooner to get her on shore, but the water gained on us so fast, that we could not do anything with it; the schooner filled and struck on the bottom and turned over; that all hands remained on her, on her beam, until day; that at daylight we tried to save ourselves; that the cotton all floated off; that by the collision all the planks of the schooner were started from her stern; she was soon opened forward; that all of the headwork, bowsprit, jib-boom, and the sails on them, were carried away and hung along side; that at the time of the collision was headed south and west; that if the steamboat had stopped, the collision would have been avoided; that nothing could have been done by those on the schooner to prevent the collision; that they had done before what could be done by putting the helm down, and that was the only way that anything could be done; that if the helm had been put the other way instead of hard down the collision would not have been prevented, as there was not room to put to the westward of the steamboat unless the steamer had stopped; that at the time of the collision the steamer was stearing about north-northwest; that she was apparently crossing the bows of the schooner; that deponent did not see any one on the steamer at any time either before or at the time of the collision; that he heard no voice from the steamer; that it was a clear starlight night; that there was no moon; that a vessel could be seen at some distance; that in the morning the wind blew hard and the sea was rough; that after the steamer was discovered the captain was on top the cotton; the cotton was on the galley; that from the time that the steamer was discovered until after the colli-

sion took place, Captain Twiford was backward and forward on the cotton; that all hands were on deck, and deponent and Mr. Broline forward; that Mr. Thompson, was at the helm; that he had been on board the said schooner twenty days before this happened; that the schooner was in good order, tight, and did not make a drop of water; that she had sails and rigging, as is necessary for such a vessel, and as good a schooner as he has seen in Mobile Bay; that he has been following the sea going on thirteen years; that he never saw Captain Twiford until he went on his schooner.

Cross-examined.

Defendant was twenty years of age on the fourteenth of January, 1850; that he never took any interest in the navigation of Mobile Bay; that he was not well acquainted with it; that he does not know whether the schooner was in the proper course to the shipping or not; that the steamer was distant from a mile and a half to two miles when she was first seen; that it was then between four and five o'clock; that the schooner was going a south course at the time; that he cannot say what course the steamer was steering, but she was a little on the larboard bow of the schooner; that it was about three-quarters of an hour to an hour from the time she was first seen, to the time of the collision; that he remained on deck, as did all hands remain on deck, all of the time; that when the steamer was first discovered the captain told the man at the helm to keep her away; that they continued in that course, which was south by west, until they came near to the steamer; that the steamer did not change her course from the time that she was first seen, to the time of the collision; that at the time that the captain gave the order to put the helm hard down, the vessels were about three yards apart; that the helm was put hard down and the foresail jibed and that slewed the head of the schooner around to the eastward; that deponent does not know whether the foresail jibed back again or not; that the steamer ran into the schooner; that from the time that the helm was put hard down, and she turned her head to the eastward, the course of the schooner was not changed until after the collision, and until after she sunk and touched the bottom, and that was about 15 minutes after the collision; that the bow of the schooner struck the steamer and the bow of the steamer did not strike schooner; that the schooner filled with water in about fifteen minutes and sunk as soon as she filled; that the schooner was loaded in the same manner as schooners generally are loaded; there was twenty-eight bales in the hold, and the balance on deck; that she was a water-boat, the tank was out; that after the collision they got a stay sail on her, and tried to get her on shore, but that she filled so fast, that she sunk with her head to the eastward; that after the collision the schooner was heading to the westward, and she was in that direction when the steamer went by her; that she sunk with her stern on the bottom first, and swung

around with her head to the eastward, the wind and current running from the north; that she was laying after she sunk with her broadside to the wind and current; that she struck on the bottom first and then she slewed with head to the eastward, and then urned over; that her keel was on the bottom and her bow was not.

Direct Examination Resumed.

That in the distance of three yards, if a vessel was under a good control of her helm, she might be changed three or four points in her course; that at the time of the collision the schooner was heading south by west; that the collision immediately occurred after the jibing of the sail; that Captain Twiford was sober when he came on board of the vessel, and when she left the wharf; that all of the crew were sober; that they had all been up all night getting the schooner off from the ground; that there was not any liquor on board the schooner; that the schooner left the wharf between one and two o'clock.

his
SAMUEL x AUGUSTUS.
mark

Subscribed and sworn to before me,
ALEXANDER M'KINSTREY,
Comm'r.

And the said Joseph Swift having been by me duly and carefully examined, cautioned, and sworn, did depose and say, and doth depose and say, that he was on board the Steamer Oregon at the time of the collision between the said steamer and schooner. It was early in the month of September, 1849; it was on Saturday morning; he heard some one on board the steamer halloo that they were about to run into a schooner; does not know who it was; shortly afterwards the collision took place; that he heard some one on board the schooner halloo that the schooner was sinking; that it was not exceeding a minute's time, say half a minute or a minute, from the time that some one sung out on board the steamer, that they were about to run into a schooner, until the collision took place; that deponent was a passenger on board of the steamer at that time; that defendant heard some one halloo out a few times after the collision, "help," as the deponent understood it, and that the schooner was sinking; that deponent should say that the steamer did not stop either before or after the collision, but kept on her way.

Deponent was a deck passenger; he was on the box that covers the boilers; that he ran forward towards the bar; that the bar is near the centre of the boat; that deponent did not see the schooner at any time, until the jib boom of the schooner struck the steamer; that the jib boom of the schooner came into the steamer at the second gangway; that the schooner came into the steamer on the starboard side, raking aft at an angle of from thirty to forty-five degrees; that

deponent did not tell the captain, or any one on the steamer of what had occurred, and of the cry; that he does not know whether or not the captain heard any of the hallooing or cries.

JOSEPH SWIFT.

Subscribed and sworn to before me,

ALEX. M'KINSTRY,
Commissioner.

And the said Anthony Tyson, having been by me duly and carefully cautioned, examined, and sworn, did depose and say, and doth depose and say (after having been sworn on his voire dire), the said Tyson says, that he was a pilot on the said Steamboat Oregon at the time of the collision, and was in the wheel-house navigating the steamer. Upon which the plaintiff's counsel objects to the testimony of said Tyson, on the grounds of his interest, he being incompetent, by virtue of his position on said steamer; and the annexed release being exhibited by the witness, the libellants further object to the competency of said witness on the following grounds: That the said release exhibited, appears to have been and is made in the presence of the commissioner, by Captain Heirn alone, without exhibiting any authority whatever for representing the other parties in interest, while it appears, at the same time, that James L. Day, John Geddes, Robert Geddes, Abraham Wolf, and Charles L. Reynolds, are jointly interested with him, the said Captain Heirn, as owners of the said Steamer Oregon. The libellants further object to the competency of said witness, on the ground that if interested in any way, he is as much interested to the libellants as the defendants in this cause, and the libellants refuse to release him; and that the release is insufficient on its face; which objections the commissioner overruled; to which the libellants except, and reserve the question for the decision of the Court.) And the said Tyson says, that he was present at the time of the collision between the Steamer Oregon and the Schooner William Ozman; that it was about two o'clock, at night; that it was a hazy moonlight night; that this was about twelve miles below Dog River Bar, in Mobile Bay; that the schooner was about one and a half miles distant at the time she was first discovered; the Oregon was steering at the time a due north course; as far as the deponent could judge, the schooner was steering about a south course, coming down before the wind; that the steamer was in the usual and proper channel, and steering in the usual and proper course; that if the schooner had continued in the course that she was sailing when she was first discovered, the collision would not have occurred; the steamer would have passed to the left or west side; that the steamer did not change her course; that the schooner continued until within one hundred and fifty yards of the steamer, when she suddenly changed her course to the westward, and when the collision occurred, she was heading west-northwest, or there-

abouts; that the schooner ran into the steamer, striking her a little forward of amidships, with her bow, the jibboom of the schooner passing into the middle gangway of the steamer; that after the collision, the schooner swung alongside of the steamer, and dropped astern of the steamer, heading the same way with the steamer; that the steamer could not have avoided the collision; that the schooner could be plainly seen, and that the collision happened on account of the change of the course of the schooner; and had the schooner not changed her direction, she would have passed one hundred and fifty yards on the east side of the steamer; when deponent first could distinguish on which side the foresail of the schooner was, it was on the starboard, and the schooner was on the larboard tack when the collision occurred; the foresail was on the larboard side.

Cross-examined.

That he was in the pilot-house when the schooner was discovered, and remained there until after the collision; that one Peter Matthewson was there also; that Peter was at the wheel at the time the schooner was discovered, and kept the wheel until the collision occurred; that at the time the schooner was first discovered, she bore north, half east; that the wind was north a little east, and a strong breeze; that as soon as deponent saw that the schooner had changed her course, he tried to change the course of the steamer by putting the helm to starboard; that the effect of doing so was to turn the steamer a half a point to the westward; that nothing else was done to avoid a collision on board of the steamer; the night wheels upon the engine were stopped, but the steamer kept on her course; that the steamer kept her course due north from the time that the schooner was first discovered until within 150 yards of the schooner, when she fell off one point to the westward, and was standing that way when the collision happened; that he heard no cries from the schooner either before or after the collision; that deponent is not an American citizen; he is a Dane by birth; he has been in the United States nineteen years; that the steamer reached the City of Mobile between half past three and four o'clock in the morning; that at the time the schooner changed her course at the distance of one hundred and fifty yards, she was four points to the eastward of the steamer.

ANTHONY TYSON.

Subscribed and sworn to before me,

ALEXANDER M'KINSTRY,

Commissioner.

And I, the said Alexander M'Kinstry, Commissioner as aforesaid, do hereby certify, that I am not of counsel or attorney for either of the said parties to the said cause, nor am I interested in the event thereof; that R. H. Heirn, Dan'l Chandler, Kiah B. Sewall, Lyman Gibbons, were each and all of them present at the taking of

the said depositions, and examined and cross-examined each and all of the said witnesses; that the said examination was continued from day to day, until completed; that each of the said depositions were reduced to writing by me, and read aloud by me to the said witnesses respectively, and subscribed by them respectively in my presence, and that I have retained the said commission and testimony in my possession, until I may return it to the United States District Court, for the Southern District of Alabama, at Mobile.

Witness my hand and seal, at Mobile, this the fourth day of May, A. D. 1850.

ALEXANDER M'KINSTRY,
U. S. Com'r.

Published by order of Court, Dec. 14th, 1850.

JOHN FITTS,
Clerk.

Statement of cost of 140 bales cotton lost from lighter William Ozman, making part of the cargo of Sardinian Ship Maria Theresa.

Cost of 140 b's cotton, ...	$7,296 78
Paid crew of Maria Theresa, 19 men, $3 each as pr recommendation of arbitrators, for salvage on 20 b's cotton, ...	57 00
Reselling commissions, ...	33 20
	$7,386 98

Cr's.

Nett proceeds of sales 126 b's cotton as pr. acc't of Port Wardens, ...	1,386 31
Nett less, ...	5,999 67
	$7,386 98

MOBILE, Oct. 6th, 1849.

E. E. J. BELL, JR. & CO.

And afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and fifty-one, being a day of a term of said Court begun, and held in and for said District, on the second Monday in December, A. D. 1850, this cause having been submitted to the Court, his honor John Gayle, Judge, &c., delivered the following opinion and decree, to wit:

Opinion of the Court.

JOSEPH ROCCA & ROCCA,
v.
THE STEAMER OREGON.

In this case, a libel is filed to recover damages occasioned by a collision in the Bay of Mobile, between the Schooner William Ozman, and the Steamboat Oregon, which the libels allege was occasioned by the negligence or unskilfulness of the master of the steamboat. The schooner was the property of the libellants, Turner and Twiford, and was loaded with one hundred and forty bales of cotton, the property of the libellants, the Roccas; which she was conveying as a lighter from the City of Mobile to the Sardinian Ship Maria Theresa, lying about twenty-seven miles below or south of the City, at a place known as the lower fleet.

By the collision, the schooner was sunk. Her value, with her tackle, apparel, and furniture, was two thousand dollars; the wreck was afterwards sold for the sum of $\$102\frac{5}{100}$ and her tackle for $100, the cotton was worth seven thousand and twenty-four $\frac{8}{100}$ dollars. A portion of the cotton was afterwards picked up in a damaged state and sold under the direction of the Port Wardens; the nett proceeds of the sale amounted to the sum of twelve hundred and ninety-five $\frac{11}{100}$ dollars.

The respondents charge, in their answer, that the collision and loss were occasioned by the carelessness, mismanagement, and want of skill in the master of the schooner, and by no fault of the Oregon.

The Oregon was on her passage to Mobile from New Orleans. The foresail was the only sail set or employed on the schooner after she got below the Pass, and before the steamer was discovered; the collision happened between two and four o'clock in the morning of the It was a bright starlight night, the moon also shone, and objects could be seen at a considerable distance; the wind was blowing fresh from the north, or from a point a little east of north. The vessels discerned each other about the distance of a mile and a half; there were about on the meridian, proceeding towards each other in opposite directions. The schooner was sailing before or with the wind; the steamer was going at the rate of eight, and the schooner six miles an hour; thus far there is no difference between the parties, or conflict in the evidence.

The crew of the schooner, besides the master, was composed of the mate, three seamen, and a black boy, the cook. The master, mate, and one of the seamen have been examined as witnesses on the part of the libellants; their evidence is in substance as follows: that when the steamer was discovered the master of the schooner ordered the man at the helm to steer in a southwest direction, so as to pass the steamer to the west, which order was obeyed, and the schooner con-

tinued in that course until she came within about fifty yards of the steamer, and would have passed her about thirty yards to the west, giving the steamer, in the language of the witness, "a wide berth." At this moment, the steamer suddenly changed her course to the westward, across the bow of the schooner. A collision now seemed inevitable in the opinion of the master of the schooner, and he hallooed loudly to the steamer several times, that she would run into the schooner, this was also done by some of the hands. The order was then given to put the helm hard down, with the view to turn the schooner more to the east, and to pass the steamer if possible on her starboard side. About the time the order was given, the sail of the schooner jibed to the larboard, which turned her bow more to the west, when her jib-boom struck the steamer on her starboard side, a little forward of the wheelhouse. The blow carried away the bowsprit and nightheads of the schooner, and split her planks and timbers open to the water's edge. The master again hallooed to the steamer to take him and his crew off, as his vessel was sinking, but no attention was paid to him, and the steamer proceeded on her voyage to the city. In a few minutes the schooner sunk, and the cotton on her deck rolled into the sea. The witnesses say that the diagram shown them and exhibited in court, presents the true position of the vessels when the collision took place. From this, they were crossing each diagonally, the schooner in a southwest and the steamer in a northwest direction. The statement of the schooner's mate as to her precise direction when the vessels contact, is different from that of the master. He says, that as soon as the helm was put hard down the foresail jibed to the larboard side for an instant, and then swung back to the starboard, bringing the head of the schooner to the eastward from the course she had been steering, and gave her a direction south by east. The mate and master are of opinion that the jibing was caused by the wind, while one or two mariners who heard their evidence, expressed the belief that it was occasioned by putting the helm in a position contrary to the direction of the captain, that is, that it was put hard up instead of hard down. The only witness for the defendants who saw the movements of the vessels and the collision, is Anthony Tyson, the pilot of the Oregon. He states that he was present at the time the collision occurred; that it was about two o'clock in the morning, and about twelve miles below Dog River Bar, in the Bay of Mobile, and that it was a hazy moonlight night; that the schooner was about a mile or a mile and a half distant when she was first discovered. The Oregon was steering a due north course, and as well as he could judge, the schooner was steering a south course, coming down before the wind; that if the schooner had kept her course, the steamer would have passed her to the west; that the steamer did not change her course, and the schooner continued in her course until she came within one hundred and fifty yards of the steamer, when she suddenly changed her course to the westward, and when the col-

lision occurred, she was heading west-northwest, or thereabouts; that the schooner ran into the steamer, striking her a little forward of amidships with her bow, the jib-boom of the schooner passing into the middle of the gangway of the steamer; that after the collision the schooner swung alongside the steamer; that the steamer could not have avoided the collision; that the schooner could plainly be seen, and the collision happened on account of the change of her course; that had she not changed her course, she would have passed one hundred and fifty yards on the east side of the steamer; that when the witness could first discover on which side the foresail of the schooner was, it was on the starboard side, and the schooner was on the larboard tack, and when the collision occurred, it was on the larboard side. On cross-examination the same witness states that when the schooner was first discovered, she bore north half east; that as soon as he saw she had changed her course, he tried to change the course of the steamer, and changed half a point to the westward; that nothing else was done to avoid the collision on the part of the steamer, neither the wheels nor the engine were stopped; that he heard no cries from the schooner, neither before nor after the collision; and that at the time the schooner changed her course, at the distance of one hundred and fifty yards, she was four points to the eastward.

The master of the steamer did not see the collision; he states that the shock on the Oregon was so slight that he did not suppose the schooner had sustained any damage or injury, and gives this as his reason for not stopping the steamer after the collision. He states also (as matter of opinion) that the schooner must have changed her course and approached the steamer in the direction described by the mate; other witnesses (judging from the appearance of the breach) are of the same opinion. Joseph Swift, a passenger on the Oregon, states that he heard some one on the steamer halloo that they were about running into a schooner, and shortly after the collision happened. That he heard some one on the schooner halloo that the schooner was sinking; the witness further states that the jib-boom of the schooner came into the steamer on the starboard side, raking her aft at an angle of from thirty to forty-five degrees. Whether the schooner was sailing in a northwest direction, as stated by the mate of the steamer when the collision happened, was made a prominent question in the argument of the d'f'ts' counsel. He insisted with force and ingenuity, that the breach or wound being in that direction was a circumstance which of itself would outweigh the statement of witnesses, and was conclusive. I am of opinion that the apparent direction of the breach made by the jib-boom of the schooner is not conclusive to show that it pointed in that direction at the time of the collision. The steamboat, with her great power and velocity, using the bowsprit as a lever, suddenly turned the bow of the vessel in her own direction, and thus the appearance of the breach may give a

false impression of the course of the schooner, at the moment of the collision; this circumstance, therefore, so earnestly pressed by counsel, is not sufficient to counteract the positive statements of several witnesses. The mate of the steamer testifies that after the collision, the schooner swung alongside the steamer and dropped astern, heading the same way with the steamer. In the main points of this case, to wit, the course of the vessels, and the sudden change of that course, there is a contradiction in the testimony that is wholly irreconcilable. On the side of the libellants we have the concurring statements of three witnesses, which are flatly and positively contradicted by the mate of the Oregon, the only witness for the defendants who saw the collision and the movements of the two vessels. In most cases of conflicting evidence the task imposed on the court is difficult and delicate; here, however, the duty of the court is divested of all delicacy, because that duty is plainly pointed out and enjoined by a very familiar legal rule. That rule is, that a plurality of witnesses shall prevail against one, when they are all equally respectable and all testify to the same facts. The evidence then shows the case to be, that on the night of the the Schooner William Ozman, proceeding down the Mobile Bay with one hundred and forty bales cotton, which she was conveying to the Sardinian Ship Maria Theresa, then at anchor about twenty-seven miles below the city. That she was sailing due south with a fresh wind from the north. That she descried the Steamer Oregon at the distance of a mile and a half, steering due north. That with a view to pass the steamer without accident, she changed her course to west of south, which she kept until the vessels came within a short distance of each other; that the steamer suddenly changed her course to the northwest, and across the bow of the schooner; and that the collision occurred and the schooner and her cargo were lost in consequence of this sudden and altered movement in the Oregon. It only remains to state the law and apply it to this state of facts. 1st. A vessel sailing before the wind or with the wind must get out of the way of a vessel sailing against the wind. 2d. A vessel on the starboard tack and the vessel on the larboard tack are bound to give way to each other. 3d. Steamboats are always bound to give way to vessels using sails, only because they receive their impetus from steam, have greater power, are more manageable, and capable of being kept under better command; they are always to be considered as sailing with a fair wind. 3 Kent's Comm. 230; Story on Bailments, 606, 607; Abbot on Ship. 308. These rules are dictates of common sense and common prudence. They have been long established in England and the United States, and it is presumed are familiar to all persons engaged in the navigation of the sea or the coast. The Steamboat Oregon has not observed these rules in relation to vessels of her description. The collision was by her fault, and she is liable for the loss of the Schooner Wil-

liam Ozman and her cargo. It is therefore ordered that the following decrees be entered on the records of this Court.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMER OREGON.

Decree.

This day cometh the libellants, by their proctors, and also came R. H. Heirn, master and part-owner of the said Steamer Oregon, who intervened in this suit for himself and the other owners of the said steamer, by their proctors, and this cause coming on to be heard upon the libel, answer, and proofs, was argued by the counsel. Upon consideration whereof, it is declared by the Court that the libellants have established their claim to damages against the said Steamer Oregon, her tackle, apparel, and furniture, and all persons intervening for their interests therein, to the amount of six thousand five hundred and ninety-nine dollars and sixty-four cents, and it is ordered, adjudged, and decreed by the Court that the said Steamer Oregon, her tackle, apparel, and furniture be condemned as forfeited to said libellants to satisfy said damages and costs. And it appearing to the satisfaction of the Court, that the said steamer, her tackle, apparel, and furniture, have been delivered to R. A. Heirn, Chas. Le Baron, and Chas. L. Le Baron, who have stipulated to have said Steamer Oregon, her tackle, apparel, and furniture, forthcoming, to abide the decree of this Honorable Court, and in default thereof to pay the said libellants the sum of twelve thousand dollars, and that they have failed to produce said steamer, her tackle, apparel, and furniture, or to pay said sum of twelve thousand dollars, as they were bound to do. Therefore, it is considered by the Court that the said libellants do have and recover against the said R. A. Heirn, Chas. Le Baron, and Chas. L. Le Baron, the said sum of twelve thousand dollars, together with all costs, to be discharged upon the payment of the sum of six thousand five hundred and ninety-nine dollars and sixty-four cents and all costs.

Appeal.

The defendants come into open Court, and pray an appeal to the next Circuit Court, for this District, which appeal is allowed upon the defendants entering into bond in double the amount of the decree, conditioned to prosecute their appeal to effect, and to abide and to perform the decree in the said appellate Court; which bond is to be approved by the Judge of this Court, and to be given within fifteen days from the date of this order. And it is further ordered, that

execution be suspended till the expiration of the fifteen days herein allowed for the preparation of the appeal bond. It is further ordered, that in the event the appeal is not perfected within the time herein specified, execution may issue.

Appeal Bond.

United States of America, District Court of the United States, or the Southern District of Alabama.

Know all men by these presents, that we, Roger A. Heirn, Cha's Le Baron, Cha's L. Le Baron, James L. Day, Robert Geddes, Abram Wolf, and Cha's L. Reynolds are held and firmly bound unto Joseph Rocca and Francis Rocca, in the just and full sum of thirteen thousand one hundred and ninety-nine $\frac{0}{100}$ dollars, lawful money of the United States, for which payment, well and truly to be made to the said Joseph Rocca and Francis Rocca, their heirs, executors, administrators, and assigns, we, and each of us, bind ourselves, and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-one.

The condition of the above obligation is such, that whereas, on the sixth day of January, A.D. 1851, it being a day of the term of the District Court of the United States, begun and held in and for said District at Mobile, on the second Monday in December, A.D. 1850, before his honor, John Gayle, Judge of aforesaid Court, a decree was rendered by said Court in favor of Joseph Rocca and Francis Rocca, libellants, against the Steamer Oregon, etc.; that the said Steamer Oregon, her tackle, apparel, and furniture, be condemned as forfeited to said libellants, to satisfy the sum of six thousand five hundred and ninety-nine dollars and sixty-four cents, for damages, etc., and also in favor of said libellants against R. A. Heirn, Cha's Le Baron, and Charles L. Le Baron, stipulators on their writing obligatory to have said steamer forthcoming, etc., for the sum of twelve thousand dollars and costs, to be discharged upon the payment of the sum of six thousand five hundred and ninety-nine dollars and sixty-four cents, and all costs, as by the said decree recorded in the said Court more fully appears. And, whereas, the said R. A. Heirn, Cha's Le Baron, and Cha's L. Le Baron, have prayed and obtained an appeal from said decree to the next term of the Circuit Court of the United States, for the Fifth Judicial Circuit and Southern District of Alabama, which has been, on their executing a bond, allowed, etc. Now, therefore, if the said Roger A. Heirn, Cha's Le Baron, and Cha's L. Le Baron, shall well and truly prosecute their appeal to effect, and shall also abide by and perform such decree as the said appellate

Court may pronounce in the premises, then the above obligation to be void, else to be and remain in full force and effect.

R. A. HEIRN, [SEAL.]
C. LE BARON, [SEAL.]
C. L. LE BARON, [SEAL.]
JAMES L. DAY, [SEAL.]
R. GEDDES, [SEAL.]
AB'M WOLF, [SEAL.]
CHA'S L. REYNOLDS, [SEAL.]

Witness,
GEO. H. MILLER.

Approved, this 18th January, 1851.

JOHN GAYLE,
Judge District Court for Alabama.

Filed 18th Jannary, 1851.

JOHN FITTS,
Clerk.

I, John Fitts, Clerk of the District Court of the United States, for the Southern District of Alabama, do hereby certify that the within and foregoing seventy-seven pages contain a full, true, and perfect exemplification of the record and proceedings, had in a certain cause lately pending and determined therein, wherein Joseph Rocca and Francis Rocca were libellants, and the Steamer Oregon et al. Respondents, as the same remain of record and on file in my said office.

In testimony whereof at office in the City of Mobile, I have hereunto set my hand and affixed the seal of said District Court, this thirteenth day of February, in the year of our Lord one thousand eight hundred and fifty-one.

JOHN FITTS,
Cl'k So. Dist. Ala.

Pleas had before the Hon. the Circuit Court of the United States, for the fifth Judicial Circuit and Southern District of Alabama, at a term thereof, begun and held in and for said District, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-one.

Monday morning, April 14th, A. D. 1851. The Court met pursuant to law. Present his Honor John Gayle, Judge of said Court.

And afterwards, to wit, on the 24th day of April, A. D. 1851, being a day of the said term of the aforesaid Circuit Court, the following proceedings were had in the cause of

2829

JOSEPH ROCCA et al.
v.
STEAMER OREGON, and
Stipulators.

Order.

Ordered by the Court, that this cause be continued.

And afterwards, to wit, on the 6th day of January, A. D. 1852, being a day of a term of the aforesaid Circuit Court, begun and held in and for the Southern District of Alabama, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-one, the following order was made in the cause of

JOSEPH ROCCA et al.
v.
STEAMER OREGON, and
Stipulators.

Ordered by the Court, that this cause be continued.

And afterwards, to wit, on the 23d day of April, A. D. 1852, being a day of a term of said Circuit Court, begun and held in and for the Southern District of Alabama, at Mobile, on the second Monday of April, A. D. 1852, the following order was made in the aforesaid cause of

JOSEPH ROCCA et al.
v.
STEAMER OREGON, and
Stipulators.

It is ordered by the Court, that this cause be continued.

And afterwards, to wit, on the 12th day of January, A. D. 1853, being a day of a term of said Circuit Court, begun and held in and for the aforesaid Southern District of Alabama, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-two, the following order was made in the aforesaid cause of

JOSEPH ROCCA et al.
v.
STEAMER OREGON, and
Stipulators.

It is ordered by the Court, that this cause be continued.

And afterwards, to wit, on the 22d day of August, A. D. 1853, it being a day of an adjourned term of said Circuit Court, begun and held in and for the Southern District of Alabama, at Mobile, on the fourth Monday of August, in the year of our Lord one thousand eight

hundred and fifty-three, for the disposal of appeal and chancery causes, by order of and before his Honor John A. Campbell, Presiding Judge of said Court, the following proceedings were had in the aforesaid cause of

JOSEPH ROCCA et al.
v.
STEAMER OREGON, and
Stipulators.

In this cause the Presiding Judge having been of counsel for appellants, and being incompetent to try the same for that reason, and upon the application of all the parties to the cause, it is ordered that the cause be transferred to the Circuit Court of the United States, to be holden at Milledgeville, in the State of Georgia, and the parties to the cause agree that testimony may be taken upon interrogatories and cross-interrogatories in the usual manner, upon commission to be issued by the Clerk of this Court and to be returned herein, and that after the cause is thus prepared, that the record with this order shall be transmitted to the Court aforesaid, to be submitted to the said Court upon printed or written arguments, which shall be previously shown to the counsel on either side. It is further agreed that either party may appeal from the decision then rendered to the Supreme Court of the United States, as in other cases; a bond which shall operate as a supersedeas may be executed with securities resident in Alabama, within sixty days after the rendition of the decree in the Circuit Court; and that said parties shall have that time within which to complete said appeal.

And afterwards, to wit, on the 10th day of July, 1854, it being on a day of a special term of the aforesaid Circuit Court, begun and held on the second Monday of July, A. D. 1854, by order of the Honorable John A. Campbell, Judge of the Fifth Judicial Circuit, in pursuance of previous notice.

Present: The Hon. John A. Campbell and the Hon. John Gayle. The following proceedings were had in the aforesaid cause of

JOSEPH ROCCA et al.
v.
STEAMER OREGON and
Stipulators.

Order.

In this cause the Presiding Judge of the Court having been of counsel for the appellants, and being incompetent to try the same for that reason, it is ordered, upon the application and with the consent of the parties to the same, that this cause be transferred to the Circuit Court of the United States, to be holden at Savannah, in the State of Georgia. And the parties agree that testimony may be

taken upon interrogatories and cross-interrogatories, in the usual manner, upon commission to be issued by the Clerk of this Court, and to be returned herein; and that after the cause is thus prepared, that the record, with this order, shall be transferred to the Court aforesaid, to be submitted to the said Court upon printed or written arguments, which shall be previously shown to the counsel on either side. It is further agreed, that either party may appeal from the decision thus rendered, to the Supreme Court of the United States, as in other causes, and a bond which shall operate as a supersedeas, may be executed with securities resident in Alabama, within sixty days after the rendition of the decree in the Circuit Court, and that said parties shall have that time within which to complete said appeal.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMBOAT OREGON
et al.

In this cause, to wit, on the 24th day of May, A. D. 1854, there issued from the Clerk's Office of the said Circuit Court, the following commission, upon interrogatories and cross-interrogatories, filed on the date last aforesaid, to wit:

United States of America. Circuit Court of the United States for the Fifth Judicial Circuit, and Southern District of Alabama.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMBOAT OREGON et al.

To Lewis S. Lude, Esqr., Greeting:

Commission.

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Henry Toulmin, Frederick Sheffield, George Blakesley, Scott C. Burwell, Wm. F. James, and Robert Otis, as witnesses in a cause pending in our said Court, wherein Joseph Rocca and Francis Rocca are plaintiffs, and the Steamboat Oregon et al., defendants. And therefore we command you, that at such time and place, or times and places as you may appoint, you do cause the said Henry Toulmin, Frederick Sheffield, George Blakesley, Scott C. Burwell, Wm. F. James, and Robert Otis, to come before you, and then and there examine them on oath, as witnesses in the cause aforesaid. And that you do take such examinations, and reduce the same into writing, and return the same annexed to

this writ, closed up under your seal, into our said Circuit Court, with all convenient speed.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-four.

Issued the 24th day of May, 1854.

Attest, JOHN FITTS,
Clk. C. C. Sou. Dis. Ala.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMBOAT OREGON et al.

Circuit Court of the United States, Southern Dist. of Ala. Appeal from District Court, in Admiralty.

Direct Interrogatories.

Interrogatories by defendants to Henry Toulmin, Frederick Sheffield, George Blakesley, and Capt. Scott C. Burwell, Jno. E. Fisher.

1st. What business are you engaged in, and how long have you followed it, and where do you live, and how long have you resided there?

2d. Are you acquainted with the building, sailing, or navigating ships, or steamboats, or vessels?

3d. Do you know the Steamer Oregon, plying between New Orleans and Mobile, commanded by Capt. R. A. Heirn; and if so, how long have you known her?

4th. State if you know of what materials are the timbers, planks, &c., of the wheel-house of said steamer built, and how are they constructed, and what are their powers of resistance, what is the size of the timbers and thickness of the planks of the wheel-houses?

5th. If you think yourself of sufficient skill and experience in such matters as to enable you to answer, please state what would be the effect produced on the Oregon, by a collision with a schooner about fifty-five tons, occurring under the following circumstances: Suppose said steamer come to Mobile about two miles below Dog River, with an ordinary head of steam, and a stiff northerly wind; suppose the schooner discovered the steamer coming up about two miles south of the schooner, the steamer standing about north; the schooner ascertaining the course of the steamer changed to southwest, so as to pass to the west of the steamer; when within about fifty yards of each other the steamer changed her course about two points west, and in a direction to cross the bows of the schooner, when the schooner put her helm hard down, but the foresail of the schooner (which was the only sail she had up) gibing, prevented her from going sufficiently to the eastward to clear the steamer, the starboard wheel-

house of the steamer striking the bowsprit of the schooner, and the guards of the steamer (near the wheel-house) striking the stern of the schooner; the bowsprit of the schooner was unshipped and carried away, and the bows of the schooner stove in: suppose by such collision, such schooner (she being reasonably staunch and strong) had her planks torn open to the water's edge, so that she shortly filled with water and sunk, what sort of a wound would have been inflicted by such a collision on the wheel-house of said steamer? In answering, consider that the schooner had a stiff northerly wind, and the steamer an ordinary head of steam on.

6. Would the force of such a collision have made a slight or serious wound upon the wheel-house of the steamer, and could the collision thus have taken place and the steamer escaped with a slight or immaterial injury to her wheel-house?

7. Have you examined the injury that was done to said steamer by said collision? if so, state particularly the state and extent of it, and state whether it is probable or improbable, possible or impossible, that the injury could have been received in the manner before described.

8. Suppose the vessels were approaching as before described, before either varied, that is, suppose the schooner was sailing south with a fair wind from the north, and with only her foresail set: suppose the steamer coming north, but so that they would have passed without collision; suppose the schooner suddenly turned so as to throw her bowsprit in towards the steamer, causing it to strike the steamer at her wheel-house, at the place before stated, what would have been the effect of such a collision on the steamer, what on the schooner, and how would the wound that the steamer would receive correspond with the one she did receive? would the blow, received under the state of facts first above set forth in the 5th interrogatory, throw the schooner around, or force her back; would a collision under the last stated facts, set forth in this interrogatory, throw the schooner around, or force her back?

9. Does the wound received by the steamer indicate that the two came together with approaching forces, or that as the steamer was passing, the schooner turned into her and was thrown around by the headway of the steamer?

10. Please examine the depositions of libellants on file in this case, to wit, the depositions of Twiford, Browlin, Augustus, and Swift, and state whether, in your opinion, it is or can be true from the wound received by the Oregon, that the collision took place as is set forth in said depositions; please also read the libel, and state the same as to the facts therein stated.

Read then the defendants' answer, and the depositions of Tyson and Peterson, and say whether same are consistent or inconsistent with the appearance of the wound inflicted on the Oregon; please

also state fully the grounds for your opinion, and explain why you came to the conclusion you may arrive at?

10. What is the length of the Steamer Oregon? Supposing her running north, how far would she have proceeded after an attempt to turn her west before she could have turned west? how many points could she have turned in fifty yards? Explain what is a point, and also state whether the steamer is low or high pressure, and whether a high or low pressure boat is most easily turned. Has the steamer a single shaft, or a shaft for each wheel, and what effect does a single shaft have on retarding or accelerating the turning of a steamer?

11. Suppose the steamer to have had a berth of about thirty yards before turning westward, and suppose she commenced turning westward when she was within about fifty yards southwardly of the schooner, is it probable that with all the power of her engine and rudder, she could have turned so far west as to have *turned so far west as to have* overcome that berth, and run into the schooner, unless the schooner had turned her course towards the steamer? How far would the steamer have run before she could have overcome a berth of thirty yards, or in other words, how far would she have run before she could have been put thirty yards to the west of her track?

12. If either of you hold any office, or occupy any post connected with vessels or steamboats, please state it is, and how long you have held it?

13. If you know anything else that will benefit defendants, please state it as fully as if you were specially interrogated about it.

CHANDLER, SMITH, and HERNDON,
Proctors for Def'ts.

Agreement.

It is agreed, that these interrogatories and the cross-int's that may be propounded, and the answers that may be given, may be read as evidence in the case of Turner and Twiford *v.* Steamer Oregon et al. pending in said Court, as well as the above stated case.

CHANDLER, SMITH, and HERNDON,
For Def'ts.

March 29th, 1854.

So far as said answers may be legal evidence, and unobjectionable, they are to be used in both cases.

K. B. SEWALL,
Proctor for Libellants.

Filed May 24, 1854.

JOHN FITTS,
Clerk.

Circuit Court of the United States, Southern District of Alabama.
In Admiralty, in appeal from the District Court.

JOSEPH ROCCA, and
FRANCIS ROCCA,
v.
STEAMER OREGON.

Cross-interrogatories.

Cross-interrogatories on the part of the libellants, to Henry Taulmin, Frederick Shiffield, George Blakesley, and Capt. Burwell.

1. When did you become acquainted with the building of ships, steamboats, or vessels, and in what manner, and what do you mean by being acquainted with the building of ships, &c.?

2. When and where did you become acquainted with the sailing or navigating of ships, or steamboats? What has been your experience in such matters, and how long since you have been employed in sailing or navigating ships or steam vessels?

3. Is there a difference between steamboats built on the Ohio and steamers built in New York, for sea service, and what is it?

4. How long will a steamer built on the Ohio, ordinarily last, compared with one built in N. York, for sea service?

5. When was the steamer Oregon built? Is she not a stanch, strong, well-built steamer, and fitted for sea service? Has she not, ever since was built and arrived in Mobile, been running between Mobile and New Orleans, as one of the line of U. States mail steamers, and is she not still so engaged?

6. What is the size of the timbers of her guards, and the planking of the same? In what manner are her guards constructed? Are they not as strong as any steamer of her size?

7. What is the tonnage of the Oregon? What the power of her engine?

8. Are not her wheel-houses as well timbered and as strongly built and planked as those of any other steamer of her class, fitted to ply between Mobile and New Orleans?

9. Will you undertake to say, upon any given statement of facts, what will be precisely the result of a collision between two vessels? May not a slight difference in the circumstances preceding the collision, produce a marked difference in the effects?

10. Suppose two vessels to approach each other with different velocities, will not the effect of a collision on each of them be different from what it would be if they were approaching each other with equal velocities?

11. If two vessels approaching each other come in collision, one going at the rate of six miles an hour, the other ten, which of them would be most injured?

12. What difference might there be in the effect of a collision between vessels greatly disproportioned to each other in size and strength?

13. Suppose a schooner of 55 tons burden, loaded with 140 bales of cotton, going down the bay from Mobile, with a stiff N'h E. wind under her foresail alone, heading two points west of south, and the Oregon, steamer of 350 tons to be coming up, under a full head of steam, and when within 50 to 150 yards south of the schooner, she, the Oregon, changes her course northwest, in order to run across the bows of the schooner, and thereby a collision ensues, the jib-boom of the schooner striking the fore part of the steamer's starboard wheelhouse, and the guard of the steamer striking the bowsprit and stem of the schooner, the angle of collision being from 45° to 65°: which vessel would be likely to be most injured? which would be most easily turned round, particularly if the speed of the steamer was twice as great as that of the schooner?

14. If the facts were as stated in the last interrogatory, would not the effect of the collision be to turn the head of the schooner from south-southwest to northwest? and would it affect the course of the steamer at all if she went on without stopping her wheels?

15. What would be the weight or quantity of matter in the steamer Oregon, of 350 tons, with her engines, boilers, machinery, freight and passengers, compared with the schooner Wm. Ozman, of 55 tons, and 140 bales of cotton? would it be as 5, 9, 7, or 8 per cent.?

16. Is not the force or momentum of moving bodies in proportion to their weight and velocity?

16. If a schooner of 55 tons was loaded with 140 bales of cotton would not her deck be near the water, and how much would the bowsprit of the Wm. Ozman, with such a load of cotton at her stern, be elevated above the water line?

17. Would not a good deal of the cotton (140 bales), of the Wm. Ozman, necessarily be on deck? and would not this somewhat incumber her management?

18. Suppose the Wm. Ozman, loaded with 140 bales cotton, going down the Bay of Mobile, with a stiff N. by E. wind, heading S. S. W. or S. by W. with foresail on the starboard side, and while so going, suppose the foresail to jibe over to the larboard side, and at the same time the helm to be put to starboard, would she turn from her course round to the northwest?

19. Now suppose, while heading S. S. W., and at the very moment the sail jibes and the helm is put to starboard, as above stated, a large steamer, going ten or twelve miles an hour, heading N. W. is crossing the bows of the schooner, and so near that jib-boom of the schooner comes in contact with the fore part of the starboard wheel-house of the steamer, and the steamer's guard with the bowsprit and stem of the schooner, would not the schooner's head be suddenly turned from the S. S. W. round to the N. W.?

20. And would not the collision of the steamer's guard, with the stem and bowsprit of the schooner, lifting and twisting the latter, have the effect to start and open the planking of the schooner at the stem to the waters edge?

21. If at the time of the collision, the steamer was heading northwest, at the rate of 10 or 12 knots, and the schooner was heading south, going at the rate of six or eight knots, would not the effect be to turn the head of the schooner round in the course of the steamer? and if under the same circumstances the schooner was heading S. by W., or S. S. W., or S. W. by W., or S. W., would not her head by the collision be turned round towards the west and northwest?

22. Would not the same effect be produced, if the courses of the schooner and steamer were such that at the moment of collision, the jib-boom and bowsprit and stem of the schooner should come in contact with the side and guard of the steamer? If there were any difference in the effect upon the course of the schooner, would it not be merely in degree, the greater the angle of the courses the more easily the schooner would be turned?

23. Has any one conversed with you upon the subject on which you have been examined, and when and how often? Have opinions been expressed upon the facts stated to you in such conversations? Have the facts of the collision been stated to you before your examination, and by whom?

24. Had you not formed and expressed an opinion on the case, upon facts stated to you by Capt. Heirn or others interested for the defendants, before your examination before the commissioner in this case?

25. Have either of you ever witnessed a collision, such as described in this case? if yea, when and where, and between what vessels?

The libellants object to any opinion of the witnesses, unless it shall appear that the witness has such an amount of knowledge and particular skill, as to the matters inquired of as to entitle his opinion to some weight, and they object to all opinions founded on a statement of facts or circumstances different from those proved in this case.

And the libellants will object to any opinions except such as are accompanied by a statement of the facts by witnesses on which he bases them.

The libellants object to the fifth, eighth, and eleventh direct interrogatories, because they are leading, and because they do not correctly state the facts of the case.

Libellants object to the sixth, seventh, and ninth direct interrogatories, because they not founded on the facts of the case, and are insufficient bases for an opinion in this case, and but partially state the facts.

Libellants object to witnesses reading the libel, and answer, and the

depositions taken in the case, and expressing any opinion thereon, as such testimony would be illegal and incompetent.

R. B. SEWALL,
Proctor for Libellants.

Filed May 24th, 1854.

JOHN FITTS,
Clerk.

In the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMER OREGON et al.

Depositions of Scott C. Burwell, George Blakesley, William F. James, and Robert Otis, witnesses on behalf of the def'dts, in the above entitled cause, and who are the witnesses named in the annexed commission.

Scott C. Burwell, Esq., being first duly sworn, deposes and answers as follows, to the direct and cross-interrogatories hereto annexed.

To the 1st dr'ct int'y. I am engaged in steamboating. I have been a steamboat capt. ever since eighteen hundred and twenty-nine. I have been living in Mobile ever since the year 1826.

To the 2d dr'ct int'y. I am acquainted with the building, sailing, and navigating steamboats, and know something of the navigation of ships.

To the 3d dr'ct int'y. I know the Steamer Oregon plying between New Orleans and Mobile, and commanded by Capt. R. A. Heirn. I have known said steamer ever since she came out, which was about eight or nine years ago.

To the 4th dr'ct int'y. The materials of the timbers, planks, &c., of the wheel-house of said steamboat is white pine, the stancheons of said steamer's wheel-house are scantling (white pine) of about three inches square, standing perpendicular, and against which three-quarter inch white pine planking is nailed. The planking is tongued and grooved; their power of resistance is very small, being composed of the light and soft material above stated.

To the 5th dr'ct int'y. The effect which would have been produced on the Oregon, by a collision with a schooner of about fifty-five tons, occurring under the circumstances set forth in the fifth interrogatory, keeping in view that the schooner had a stiff northerly wind, and the steamer an ordinary head of steam, would been most disastrous. In my opinion it would have carried away the entire wheel-house, and in all probability, would have torn away the captain's room immediately

aft of the wheel-house, together with a large portion of the gentlemen's saloon cabin on the lower deck.

To the sixth dr'ct int'y. The force of such a collision would have made a very serious wound on the wheel-house of the Steamer Oregon. The collision could not have occurred under the given state of facts as set forth in the 5th interrogatory, and the steamer escape without very serious and disastrous injuries to the wheel-house of said Steamer Oregon.

To the 7th int'y. I have carefully examined the injury that was done to the Steamer Oregon by said collision. The injury was but slight. It was at least twelve feet forward of the wheelhouse of said steamer, on the starboard side, where the wound was inflicted. It appears to have been perforated and torn by the schooner's jib-boom, when she was heading about two points of the Oregon's course.

The part of the steamer with which the schooner's jib-boom first came in contact, was between two stancheons above the upper rail; the schooner's jib-boom (or other extremity), must have ranged forward, as the stancheon abaft the wound was wholly untouched and uninjured, while the one standing forward of the wound was broken out board. It was utterly impossible for the damage actually sustained by the steamer, in consequence of the collision, to have been inflicted, under the state of facts supposed in the fifth interrogatory; as I have already stated, under those circumstances, the collision would have proved very disastrous to the steamer.

To the 8th direct int'g. If the schooner was sailing south, with a fair wind from the north, and with only her foresail set, and if the steamer coming north, so that they could have passed each other without collision, and the schooner suddenly turned so as to throw her bowsprit towards the steamer, causing it to strike the steamer at her wheel-house, the effect of the collision on the Steamer Oregon would have been the same that I have attributed to the supposed case in interrogatory fifth. The effect of such a collision on the schooner would have been the loss of her jib-boom, and probably bowsprit, providing the schooner was of ordinary stanchness and strength; but if the schooner was old and rotten, the headway of the steamer, and the impetus given to the schooner by the stiff northerly wind striking the jibing foresail, might have proved more serious in effect to the schooner than the mere losing of her jib-boom; the bowsprit might have acted as the lever, and wrenched the planking of the schooner.

The wound the steamer would have received in a collision occurring under the stated facts in either the fifth or eighth interrogatory, does not correspond with the one she did receive. The injury to the steamer in the supposed cases would, as I have already stated, been very serious, while the actual injury was but very slight; a carpenter could have repaired her in two or three hours.

The blow the schooner would have received under the state of

facts set forth in both the fifth eighth interrogatories, would have thrown around and not forced her back; especially under the case put in the fifth interrogatory, when the foresail jibed.

To interrogatory ninth. The wound actually received by the steamer does not indicate that the two boats came together with approaching forces, but that the steamer was passing when the schooner turned into her, and was thrown around by the jibing of her foresail, or some other cause, assisted by the headway of the steamer. It is my opinion that the actual wound indicates that the collision took place after the schooner had nearly turned around; the schooner having a strong wind; and the stancheon forward of the wound having been broken out board.

To the tenth interrogatory. I have carefully read the deposition of Twiford, Browlin, Augustus, and Swift, and in my judgment, the facts stated by them is not only inconsistent and at variance with the injury received by the Oregon, but is inconsistent with themselves.

Mr. Wm. Twiford states, that when he gave a certain order, the foresail jibed to the larboard side of the schooner; that he was on top of the cotton, and when the sail jibed he had to fall down on his stomach, to avoid being knocked down by the boom of the sail; that after the sail had jibed, he arose to his feet, and as he arose the steamboat was coming in contact with the jib-boom of the schooner; the starboard side of the steamboat striking the jib-boom of the schooner just forward of the wheel-house by the gangway; that the effect of the blow was to carry away the bowsprit, the night heads, and to split the schooner open down to the water's edge. Now, if the starboard side of the steamer came in contact with the jib-boom of the schooner and the place just forward of the wheel-house by the gangway, striking the jib-boom first, it is evident the force of collision would have been approaching, and before the jibing of the foresail, and headway of the steamer could have turned the schooner round, she would have taken down the entire starboard side of the steamer, tearing the wheel-house, and probably part of the gentlemen's saloon cabin, on the lower deck; for the outside planking of the Oregon, at about the range of the schooner's jib-boom, is extremely soft and fragile; in fact, a rude kick with one's heel, could perforate a hole anywhere within said range; therefore, in answering this question, I think I can very safely say, that it was utterly impossible, from the wound inflicted on the Oregon, for the collision to have taken place as is set forth in Mr. Twiford's deposition.

Mr. Browlin states in his deposition, that the schooner run into the steamer back of the gangway, and forward of the wheel-house, with the bowsprit of the schooner, and the bow of the steamer; that it took the bowsprit of the schooner out altogether, and that opened the planks from the stem; that the steamer shoved the schooner up to the northward and westward, before the schooner got away from

her. If I understand Mr. Browland, he believes that the schooner run into the steamer; the bowsprit of the schooner first coming in contact with the bow of the Oregon, or a place back of the gangway and forward of the wheel-house; as he does not give the positions of the boats at the moment of collision, I must infer his idea of their position from his statement, that "the steamer shoved the schooner northward and westward before the schooner could get away from her (the Oregon); their position at the moment of collision must have been such, if Mr. Browlin's testimony be correct, that the forces which caused the collision was approaching. Now, as I have said before, if such was the case, the mere headway of the steamer, disregarding the influence of the foresail's jibing, could not have shoved the schooner around before the jib-boom and bowsprit of the schooner would have torn the outside planking of the steamer, as in the case of Mr. Twiford's testimony just spoken of.

Samuel Augustus states, "that when the helm of the schooner was put down, the foresail jibed over, from keeping her off so far before; by that time, the steamboat struck, we was then in the steamboat; that the steamer struck the schooner on her larboard bow, forward of the fore-rigging; that the forward part of the steamer, just forward of the wheel-house, near the gangway, struck the schooner." If the steamer struck the schooner on the larboard bow, forward of the fore-rigging, the schooner's position must have been far different from the one contemplated in statement of Twiford and Browlin; for the larboard bow of a ship is the rounding part of a vessel's left side forward, beginning where the planks arch inwards, and terminating when they close at the stem or prow; consequently, the schooner would have had her stem in a northwest direction, when the steamer's course was north. I don't see how the steamer could have struck the schooner's larboard bow forward of the fore-rigging, with the forward part of the Oregon, just forward of the wheel-house, near the gangway, without first coming in contact with the jib-boom or bowsprit of the schooner; with this exception, if I understand Mr. Augustus right, he places the schooner, in my opinion, in her true position, but when he says that the steamer struck the schooner in the aforementioned place (keeping in view the position which I think he gives to the schooner), he is certainly mistaken, for without giving impetus to the schooner while she was in that position, the headway of the Oregon would have merely caused the schooner to glide down her starboard side stern foremost, and the steamer could have gone on without doing damage to either of the boats. But if we give the impetus to the schooner that a stiff northerly wind rapping on her foresail would give, we can readily account for the wound received by the Oregon. By referring to my answer to Interrogatory 7th, it will be seen that I stated as my opinion, which I had formed upon examination of the injury inflicted on the Oregon by the collision, that the wound had been caused by the jib-boom coming in contact

with that part of the Oregon on the starboard side, about twelve feet forward of the wheel-house, when the schooner was heading within about two points of the steamer's course. Now if we take in consideration the sudden jibing of the schooner's foresail, and the stiff northerly wind, we can arrive at no other conclusion, than that the steamer was run into by the schooner after she had turned around to the position given her by Mr. Augustus. The wound on the Oregon fully justifies me in the conclusion, for the stanchion aft of the place of contact on the steamer was uninjured, while the one forward was broken outboard. Joseph Swift states, "that he did not see the schooner at any time, until the jib-boom of the schooner struck the steamer; that the jib-boom came into the steamer at the second gangway; that the schooner came into the steamer on the starboard side, raking aft at an angle of from thirty to forty-five degrees."

It is needless for me to again state my reasons why, in my opinion, the wound received by the steamer Oregon, in consequence of that collision, could not have been caused from a collision taking place under the circumstances stated by Mr. Swift. If what he says had been true, the whole siding of the Oregon, on the starboard side, would have been torn away; that is, from the point of contact clear to the rear of the wheel.

Upon reading the libel as requested in the interrogatory, I find that the libellants aver, "that, while the Oregon was under a full head of steam, the starboard wheel-house of the steamer struck the bowsprit, and her guard, near the wheel-house of the said steamer, the stem of said schooner, whereby the bowsprit of said schooner was unshipped and carried away." The above statement does not correspond with my examination of the Oregon's wound. It was inflicted at about twelve feet from the wheel-house, forward, and not at the wheel-house. The starboard wheel-house of the steamer, and her guard, could not have struck the bowsprit and the stem of the schooner at the same time; for before the guard of the steamer could have come in contact with the stem of the schooner, the bowsprit of the schooner would have broken its way outboard if the schooner was anywise strong and stanch, and consequently the headway of the steamer would have turned the schooner in a parallel direction with the steamer; therefore, for the above reasons, I can not reconcile the statement of the libellants with the reasoning which can easily be deduced from the actual injury to the Steamer Oregon. Upon reading the defendant's answer to the libel, to which my attention is drawn by the interrogatory, I find the defendant states, "that the jib-boom of the schooner ran into the steamer, and as she wheeled away, it was broken." At another place I find it stated, "that, while the schooner was proceeding on a course, which, if followed, no collision could have taken place, the vessel was suddenly wheeled round and run upon the midships of the steamer, which act was produced by the act of the steersman of the schooner, in jibing

the foresail over and rounding the vessel." It seems to me that the defendant's answer is perfectly consistent with the wound inflicted on the Oregon, and accounts for the stanchion forward of the injury being broken outboard. On reading the depositions, as requested, of Messrs. Tyson and Peterson, I find that the former states, that, "when the collision occurred, she (the schooner) was heading west-northwest, or thereabouts; that the schooner ran into the steamer, striking her a little forwards of the midships, with her bow, the jib-boom of the schooner passing into the middle gangway of the steamer; that after the collision the schooner swung alongside of the steamer, and dropped astern of the Oregon, heading the same way with the steamer." I differ from Mr. Tyson in regard to the heading of the schooner at the time of collision; he states that she was heading at about west-northwest; from my examination of the wound inflicted on the Oregon, I am of opinion, that, had the schooner headed W. N. W., the damage to the Oregon would have been greater than what it really was; the schooner certainly could not have headed more than two or three points from the Oregon's course, and if she headed west-northwest, there would have been four points intervening between the Oregon's course and the heading of the schooner. I fully agree with him, from inspection of the wound, that the schooner run into the steamer, for, take away the power of the wind on the schooner's foresail, when she would be heading about two or three points from the steamer's course, she never would have struck the Oregon, and both would have been uninjured; but it is the force of the stiff northerly breeze, rapping full on the schooner's foresail, which gave her the impetus, after she had turned, to inflict the wound which I have already described. I differ still more from Mr. Peterson's statement in regard to the heading of the boats. He says, "that at the moment of collision the Oregon was heading northwest; as near as he could state, the schooner was heading about west by south. The schooner run her jib-boom into the broadside of the Oregon, between its wheel-house and the middle gangway. The larboard bow of the schooner struck the starboard side of the Oregon, whereby the larboard bow of the schooner was stove in." Now, if the steamer was heading northwest, and the schooner west by south, there would have been six points intervening between the course of the Oregon and the heading of the schooner, and a collision occurring under such circumstances would have caused greater damage to the Oregon than in the case of Mr. Tyson's, with the exception of the heading of the schooner, as he thinks it to have been at the time of collision. I am of the opinion that the statement is perfectly consistent with the wound inflicted on the Oregon. I have stated the grounds of my opinion as fully as possible under each case put, therefore I deem it unnecessary to recapitulate my opinions, as the close of this interrogatory requests.

To the 10th dir'ct int'y. The Steamer Oregon is about two hundred

and thirty-five to two hundred and forty feet in length. If the Oregon was running north, and an attempt was made to turn her west, she would have proceeded about six or seven hundred yards before she could have turned west. The Oregon could not have turned more than half a point in fifty yards. The compass is divided into thirty-two points, giving eleven degrees and fifteen to each point, or six hundred and seventy-five miles in a circle equal to the circumference of the globe.

The Steamer Oregon is a low pressure boat. The high pressure steamers are more easily turned. The Oregon has a single shaft. The effect of having a single shaft when turning a steamer is such as to require much more time and space in rounding to, than in a boat with double engines, the shafts of each wheel being disconnected with each other. A double-engined steamer, shafts disconnected, will round to three times in the same length of time and take one half less space, than will a steamer with a single engine and stiff shafts, such as the Oregon.

To the 11th direct int'y. If the steamer had had a berth of about thirty yards before turning westward, and that she had commenced turning westward when she was within fifty yards southwardly of the schooner, it was utterly impossible, with all the power of her single engine, stiff shafts, and rudder, to have turned so far west as to have overcome that berth and run into the schooner, unless the schooner had turned her course towards the steamer. The Steamer Oregon under an ordinary head of steam will run from eighty to one hundred yards before she can be turned thirty yards on either side of the track.

To the 12th direct int'y. For about three months past I have held no office nor occupied no post connected with steamboats, but previous to this winter I have had charge of steamboats ever since eighteen hundred and twenty, or eighteen hundred and thirty.

To the 13th direct int'y. I know nothing further that will benefit the defendants in this cause.

Answers to Cross-interrogatories.

To the 1st cross-int'y. When I speak of being acquainted with the building of steamboats, I do not mean that I am a mechanic, but that I am acquainted with the different parts of a steamer, and know how the different parts should be put together. I drew a plan of my Steamboat Louisa, and superintended her building in Cincinnati, Ohio.

When timbers and materials did not suit me, I caused them to be laid aside, and others substituted.

I have also superintended the repairing of divers other steamboats plying the waters of Alabama for the last twelve or fifteen years.

To the 2d cross-int'y. My experience in navigating ships is somewhat limited, having devoted only some three or four years of the

earlier part of my life to it. This was in Boston, where my father was a ship-owner.

In eighteen hundred and twenty-six, I went clerk of a steamboat here in Mobile. I remained at that post two or three years, when in eighteen hundred and twenty-nine or thirty, I took charge of a steamboat as captain. I have filled that post on various steamboats from that time until last winter.

The steamboats which I commanded plyed the waters of Alabama, and the Mississippi River.

To the 3d cross-int'y. There are but very few boats made on the Ohio for the sea-service; what few I have seen, have been rather failure in comparison with boats made in New York, being so deficient in materials and fastenings.

To 4 cross-int'y. The steamers built on the Ohio River for sea-service, if kept in good repair, will last six or seven years. Those built in New York, will last from fourteen to twenty years.

To the 5th cross-int'y. The Steamer Oregon was built in New York. She is a stanch, strong, well-built steamer, and fitted for sea-service. The Steamer Oregon has, ever since she was built and arrived in Mobile, been running between Mobile and New Orleans, as one of the line of United States Mail Steamers, and she is still so employed.

To the 6th cross-int'y. The timbers of her guards is white pine, 4 by 5. Her guard planking is 2 inches planed. They are as strong, I think as strong as any steamer of her size.

To the 7th cross-int'y. The tonnage of the Oregon is five hundred and thirty. The power of her engine, 1 cylinder 44 inches ten feet stroke.

To the 8th cross-int'y. Not having examined the wheel-houses of the other steamers plying between New Orleans and Mobile, I cannot state of my own knowledge, whether the wheel-house of the Oregon is as well timbered, as strongly built, and planked or not. But what I have said of the Oregon's wheel-house, siding, &c., above her rail, in my answers to the direct interrogatories, I stated from actual inspection.

To the 9th cross-int'y. I could not tell, upon any given statement of facts, what the precise result of a collision would be; but any one who has much experience in the navigation of steamboats or vessels, can easily state the general outlines of the effect of a collision upon a given statement of facts. In some cases, a slight difference in the circumstances preceding the collision would produce a marked difference in the effects, but it is altogether owing to what the slight differences are.

To the 10th cross-int'y. If two vessels were approaching each other with different velocities the effect of a collision on each of them would be different from what it would be if they were approaching each other with equal velocities.

To the 11th cross-int'y. If two vessels approaching each other, come in collision, one going at the rate of six miles an hour, and the other ten, the one going six miles an hour would be most injured.

To the 12th cross-int'y. If a collision occurred between vessels greatly disproportioned to each other in size and strength, the effect of the collision would entirely depend on the way they were heading at the time of collision. If the strong vessel is heading north and the weak one south, or in any other opposite direction, the weaker vessel will receive the greatest injury.

To the 13th cross-int'y. If a schooner 55 tons burthen, loaded with 140 bales of cotton, going down the Bay from Mobile, with a stiff N. b. E. wind under the foresail alone, heading two points west of south, and a Steamer Oregon, of 350 tons, was coming up under a full head of steam, and when within from 50 to 100 yards south of the schooner, the steamer would change her course northwest, in order run across the bow of the schooner, whereby a collision occurred, the jib-boom of the schooner striking the fore part of the steamer's starboard wheel-house and the guards of the steamer, in striking the bowsprit and stem of the schooner, the angle of collision being from forty-five to sixty-five degrees, the steamer would be the most injured; the planking and scantling of her wheel-house, siding, and the gentlemen saloon cabin on the lower deck, being constructed of the lightest white pine material, the schooner's jib-boom and bowsprit would have torn their entire siding away. If the schooner was stanch and strong, her only loss would be her jib-boom and bowsprit; if the schooner was weak and rotten, the bowsprit might act as a lever, and open her bows or wooden ends. The schooner would be the most easily turned around.

To the 14th cross-int'y. If the facts had been as stated in the last interrogatory, the effect of the collision would have turned the head of the schooner from south-southwest to a parallel direction with the steamer, for after tearing away the wheel-house, the concussion would have been such as to check the speed of the schooner, and the resistance of the yet uninjured siding, together with the headway of the steamer would have turned her around, as I have above stated. The collision would not affect the steamer's course but only in a very inconsiderable degree.

To the 15th cross-int'y. I have no idea of what would be the weight or quantity of matter in the Steamer Oregon, of 350 tons, with her engines, boilers, &c., compared with the schooner of 55 tons, &c.

To the 16th cross-int'y. The force or momentum of moving bodies is in proportion to their weight and velocity. If a schooner of 55 tons was loaded with 140 bales of cotton, I do not think her deck would be very near water, as that is but very little over a half of a load for her. I do not know how much the bowsprit of the William Ozman, with such a load of cotton, would be elevated above the

water at her stem. The elevation of the bowsprit above the water would be entirely owing to what rake it might have.

To the 17th cross-int'y. A considerable quantity of the cotton, I think, would necessarily be on deck; I do not see that it would much encumber her management.

To the 18th cross-int'y. If the Wm. Ozman, loaded with 140 bales cotton, going down the Bay of Mobile with a stiff N. b. E. wind, heading S. S. W., or S. b. W., with her foresail on the starboard side, and while so going, the foresail jibed over to the larboard side, and at the same time the helm was put to starboard, the schooner would certainly turn from her course round to the northwest, or thereabouts, for the foresail having jibed, the helm would have lost all control of the schooner; but if the helm had been put hard down to starboard before the jibing of her foresail, it never would have jibed, and consequently the schooner would not have turned as aforesaid.

To the 19th cross-int'y. If the schooner was heading S. S. W. and at the moment the sail jibed, and the helm was put to starboard, as above stated, a large steamer, going from 10 to 12 miles an hour, heading N. W., is crossing the bows of the schooner, and so near that the jib-boom of the schooner comes in contact with the fore part of the starboard wheel-house of the steamer, and the steamer's guard with the bowsprit and stem of the schooner, the schooner would have turned to the northwest, or in a parallel direction with the steamer. The jibing of the foresail alone would have produced that effect; her jib-boom or bowsprit would have torn its way through the starboard siding of the steamer until she would have headed about N. W., even if the steamer had had no headway.

To the 20th cross-int'y. The collision of the steamer's guards with the stem and bowsprit of the schooner, lifting and twisting the bowsprit, would not start and open the planking of the schooner at the stem to the water's edge, if the schooner was stanch and strong; her only loss would be, in my opinion, her jib-boom and bowsprit.

To the 21st cross-int'y. If, at the time of collision, the steamer was heading N. W., and going at the rate of 10 to 12 knots, and the schooner was heading at the rate of 6 or 8 knots, the effect would be to turn the head of the schooner round to the course of the steamer, but not until she would have met with some resisting body on the Oregon, which would have caused the schooner to rebound by the concussion, before the headway of the steamer alone, could have turned her around; the same effect would be produced in the other courses stated, tho' the damage to the Oregon would lessen as the greating of the angle would increase.

To the 22d cross-int'y. The same effect would be produced if the jib-boom, bowsprit, and stem of the schooner should come in contact with the side and guard of the steamer. The greater the angle of the courses, the more easily the schooner could be turned.

To the 23d cross-int'y. No one has conversed with me on the subjects to which I have deposed. Capt. Heirn requested me at one time to examine the wound on the Oregon, which I did. He did not give me his opinion on the case; at least I do not recollect it, if he did. The only statement of facts which he made to me, was that the Oregon was coming up the bay and the schooner was going down.

To the 24th cross-int'y. I answer this interrogatory entirely in the negative.

To the 25th cross-int'y. I have witnessed two collisions nearly similar to the collision in question, with this exception,—the steamboats were not built as the Oregon; they were river boats, the first one was between the Steamer Jefferson and a schooner whose name I have forgotten. The steamer, of which I was captain, was coming down the river under a full head of steam and the schooner was beating down the harbor, and in one of her tacks, she run into us at an angle of about 45 degrees; we were loaded with cotton, piled up 8 or 9 tiers high on her guards and forecastle; she struck us on the larboard side, about the centre of the cotton forward, carrying away her jib-boom and springing her bowsprit, without any other damage to the schooner. By the time we were clear of her, she had swung round, heading the same way with the steamer. The steamer received no other damage than the displacement of a few bales of cotton.

The second case was between the Wm. Robinson, Jr. (which I also commanded), and a schooner whose name also I have forgotten. We were going up the river under a full head of steam. The schooner was coming down, right in front of the city; her foresail was on her starboard side with a full rap from a stiff breeze at the northward; she came into us on the larboard side, about 15 feet forward of the wheel; striking us with her bowsprit, which carried away all our siding, a large part of the cook-house as far back as the shaft. While the schooner received no injury whatever, and she also by the time we got clear of her had swung round to the steamer, heading with the steamer.

S. C. BURRILL.

Sworn to and subscribed before me, the 1st day of June, 1854.

LEWIS S. LEEDE.

Comm'r.

George Blakesley being next duly sworn, to wit, on the 29th June, 1854, deposes and answers as follows.

To the 1st dr'ct int'y. I am master of a steamboat; I have been engaged as such for the last four years. I live in Mobile, and have resided there ever since 1836. Previous to my acting in the capacity of master, I was pilot of the outer bar for about ten years.

To the 2d dr'ct int'y. I am acquainted with the building, sailing, and navigating of ships and steamboats.

To the 3d dr'ct int'y. I know the Steamer Oregon plying between Mobile and New Orleans, commanded by Capt. R. A. Heirn, and have known her ever since she was built.

To the 4th dr'ct int'y. The material of the timbers, planks of the wheel-houses of said steamer are of white pine, the stanchions are timbers of about 3 by 4, and the planking about one inch thick. The stanchions are white pine scantling, against which the planking is nailed. Its powers of resistance is very slight. Any one with a sledge hammer could break a hole through between the stanchions without much effort.

To the 5th dr'ct int'y. If the collision had occurred under the circumstances set forth in the 5th interrogatory, taking in consideration, as I am required, that the schooner had a stiff northerly breeze and the steamer an ordinary head of steam on, the steamer's starboard wheel-house, if the schooner was reasonably stanch and strong, would have been very much torn, it would even have torn the arms out of the wheel.

To the 6th dr'ct int'y. The force of such a collision would have made a very serious wound upon the steamer's wheel-house, and the collision could not have taken place under those circumstances, and the steamer escape with a slight or immaterial injury to her wheel-house.

To the 7th dr'ct int'y. I examined the wound on the Oregon shortly after it had been inflicted. The wound was about 35 or 40 feet forward of the wheel-house, on the starboard side. It extended about six feet in length, and about 2½ or three feet in width. There was only one stanchion broke; the stanchions and planking of the steamer in that part is of white pine; the former is about 3 by 3, and the latter about ⅞ of an inch thick. It was utterly impossible for the injury to have been inflicted under the circumstances set forth in the 5th interrogatory.

To the 8th dr'ct int'y. The effect of a collision on the steamer occasioned under the circumstances set forth in the 8th interrogatory, would have been equally as disastrous as a collision occurring under the circumstances set forth in the fifth interrogatory.

The collision in both state of facts, as given in the 5th and 8th interrogatories, would have occurred, I think, when the schooner ranged at an angle of about 45 degrees or four points, and if so, after the schooner would have committed the damages, she would have been stopped and turned round in a parallel direction with the steamer by the headway of the Oregon.

To the 9th dr'ct int'y. The wound actually received by the Oregon does not indicate that the steamer and schooner came together by approaching forces, but that the steamer was passing, and that the schooner run into her ranging within two or three points of the Oregon's course, and that by the headway of the steamer, the schooner was thrown around to a parallel direction with the steamer.

To the 10th dr'ct int'y. I have examined, as requested, the deposition of libellants, to wit, Twiford, Brewlen, Anjers, and Swift. I have also examined the libel, the defendant's answer, and the deposition of Tyson and Patterson, and the following is my opinion in regard to their consistency with the appearance of the wound inflicted on the Oregon. I will take them up separately, as there appears to be considerable difference between them.

Mr. Twiford states that when the order was given to put the helm hard down to starboard, the foresail jibed to the larboard side of the schooner; that he was on the top of the cotton, and when the sail jibed he had to fall down on his stomach to avoid being knocked down by the boom of the sail; that after the sail had jibed he arose to his feet, and as he arose the steamboat was coming in contact with the jib-boom of the schooner, the starboard side of the steamer striking the jib-boom of the schooner just forward of the wheel-house by the gangway; that the effect of the blow was to carry away the bowsprit, the night heads, and to split the schooner open down to the water's edge.

It is evident from his language that the two boats came together with approaching forces. Now it would be impossible for a steamer to escape with so slight a wound as did the Oregon, when a collision occurs under the circumstances stated by him, and that too, when the effect of the blow does so much damage to the schooner as he describes. The wound on the Oregon indicated that the schooner run into the steamer, when she headed within about two or three points of the steamer's course, the damages to the Oregon consequently were very slight, as I have before stated; and if the schooner was reasonably stanch and strong, the only injury that could have resulted to the schooner, would be the loss of her jib-boom, and probably her bowsprit, and if the schooner was not in a good condition, that is, reasonably stanch and strong, the bowsprit might act as a lever to the bows of the boat and press them open. If the collision had occurred as I understand Mr. Twiford to state, the injury to the steamer would have been very great, as there are three or four rooms just forward of the wheel-house, and abaft the middle gangway; before the schooner would have been stopped and turned by the headway of the steamer, she would have raked down the entire siding of the Oregon clear into her wheel-house, and would have killed those sleeping in the room just spoken of; but instead of that, the wound on the Oregon was not more than five or six feet long, caused by the bowsprit of the schooner when she was ranging within about two or three points of the Oregon's course, whatever that was.

Mr. Bowlen states that the steamer was steering north-northwest or north by west; that at that time the steamer was about twice the length or twice and a half the length of the schooner; the schooner at that time was steering about south by east; that the schooner then run into the steamer, striking the steamer back of the gangway and forward of the wheel-house with the bowsprit of the schooner,

and the bow of the schooner striking the steamer; that it took the bowsprit of the schooner out altogether, and that opened the planks from the stem; that the steamer slewed the schooner up to the northward and westward before the schooner got away from her.

If I understand Mr. Bowlin, it was utterly impossible for the collision to have occurred as he states, because the steamer steering north-northwest, or north by west and the schooner about south by east when the steamer was at no greater distance from the schooner, twice or three times her length, it was impossible, steering diametrically opposite to each other, for the schooner to run into and strike the Oregon on the starboard side forward of the wheel-house; they could not have come together in that manner, otherwise than at stem to stem; for north by west and south by east are as diametrically opposite directions as north and south, and if the course of the two boats were sufficiently different as to allow the bowsprit of the schooner to run into the steamer, back of the gangway and forward of the wheel-house, the whole siding of the Oregon would have been torn away, and the persons sleeping in the rooms between the place of contact and the wheel-house could not have escaped without serious injury, and probably death.

Mr. Augustus does not state the course of the two boats previous to the jibing of the foresail, therefore I must infer it from other facts which he does state. Had the helm been put down hard to the starboard, the foresail could not have jibed; but it was the putting it hard to port that made the foresail jibe. The very jibing of the foresail was enough with a stiff northerly breeze to suddenly turn the schooner around within two or three points west of north, though the schooner might have been heading at the time south or thereabouts. It was impossible for the steamer to have struck the schooner on her larboard bow, forward of the fore-rigging, with that part of the steamer forward of the wheel-house near the gangway, without the schooner's bowsprit pointed within two or three points of the Oregon's course, taking in consideration the shape of the two boats. Now if such was the fact, the steamer could not have run into the schooner as he says, because the schooner heading in that direction, without a motive power of her own, even if the steamer glancing by struck the schooner, she would have dropped astern of the Oregon, or in other words, would have slided down the starboard side of the steamer without doing any injury to either of them. The slight wound of the Oregon would not have been inflicted, but when we take in consideration the jibing of the schooner's foresail with a stiff northerly wind rapping on it, the schooner had no sooner turned to the position above set forth, than she run into the steamer at the place designated; the headway of the steamer prevented the wound from being more serious or extending any farther than it did. It is needless for me to quote much of Mr. Swift's testimony, because by reference to it it will be easily discovered, by my opinions already ex-

pressed, that I deem such facts as he states wholly inconsistent and at variance with the wound received by the Oregon. He states that "the schooner came into the steamer on the starboard side, making aft an angle of from thirty to forty-five degrees. Had that been the case, the siding of the Oregon would not only have been seriously torn and injured before the schooner could have been turned around by the headway of the steamer, but several persons sleeping in the rooms between the place of collision and the wheel-house would have been in imminent danger of being killed.

I have read the libel of the plaintiffs, and find it entirely inconsistent with the wound examined by me on the Oregon. They say "the starboard wheel-house of the steamer struck the bowsprit" of the schooner, "and her guards near the wheel-house of the steamer, the stem of said schooner, whereby the bowsprit of said schooner was unshipped and carried away," &c. In the first place, the starboard wheel-house of the steamer did not strike the bowsprit of the schooner, because the part of the Oregon which came in contact with the jib-boom or bowsprit of the schooner was at least thirty feet forward of the wheel-house. Secondly, the guard of the steamer near the wheel-house could not have struck the stem of the schooner, without the schooner and the Oregon came in contact when at an angle inside of seventy or eighty degrees, and had the collision thus occurred, the wound on the Oregon would have been much more serious than it actually was. I could cite other reasons showing the statement in the libel to be inconsistent with the wound on the Oregon; but as I have given my opinion in full to every case put, I deem it unnecessary to reiterate them. I have read the defendant's answer, and in my opinion is perfectly consistent with the injury on the Oregon. I do not quote it here, as I think my opinions already expressed fully anticipated a state of facts as set forth in said answer. I have read the deposition of Mr. Tyson, and find that he states the schooner at the time of collision "was heading W. N. W., that the schooner run into the steamer, striking her a little forward of the midship with her bow, the jib-boom of the schooner passing in to the middle gangway of the steamer."

I think Mr. Tyson's testimony consistent with the wound on the Oregon, that is, that at the time of collision the schooner was heading within two or three points of the Oregon's course, because the bow of the schooner could not have struck the Oregon forward of the midships, and her jib-boom pass into the middle gangway, unless she was heading that course.

Mr. Peterson states, that "at the moment of collision the Oregon was heading about northwest, as near as he can state, the schooner was heading west by south; the schooner ran her jib-boom into the broadside of the Oregon, between the wheel-house and the middle gangway; the larboard bow of the schooner struck the starboard side of the Oregon, whereby the larboard bow of the schooner was stove in," &c.

I agree with Mr. Peterson in regard to the position of the boats at the time of collision, with the exception that he places the heading of the schooner too far west.

If the collision occurred precisely as he states, the injury to the Oregon would have been greater than it was, tho' the wound would have ranged forward; with this exception I think his testimony fully reconcilable to the wound *to the wound* inflicted on the Oregon, in consequence of the collision in question. I have stated fully the grounds for my opinion, and explained in each case to which I was referred why I came to the conclusions above set forth; it is therefore unnecessary to recapitulate them.

To the 10th dr'ct int'y. The steamer Oregon is from two hundred and thirty-five to two hundred and forty feet long. If the steamer was running north she would proceed about five hundred yards before she could be turned west; that is, providing she has an ordinary head of steam on. I don't think the Oregon could turn more than half a point in the first fifty yards. A point is one of the thirty-two divisions of the compass; there is eleven degrees and fifteen minutes between each point.

The Oregon is a low pressure boat; a high pressure boat is much more easily turned. The steamer Oregon has a single shaft; the effect of a single shaft in retarding or accelerating the turning of a steamer, is this: the only means we have in turning a steamer with a single stiff shaft is the effect which the water has on the helm, and consequently, a steamer thus made is compelled to go a good way before she can be turned around. But a high pressure boat with two shafts can be turned around nearly without going out of her track, that is, by turning one wheel only.

To the 11th dr'ct int'y. If the steamer Oregon had a berth of thirty yards before turning westward, and if she commenced turning westward when she was within fifty yards southwardly of the schooner, it would be utterly impossible, with all the power of her engine and rudders, to have turned so far west as to overcome that berth and run into the schooner, unless by some means or other the schooner turned from her course towards the Oregon. The steamer would run some seventy-five or ninety yards before she could overcome a berth of thirty yards.

To the 12th dr'ct int'y. I am now captain of the steamboat Swan; have been master of steamboats for four years.

To the 13th dr'ct int'y. I know nothing further that would benefit defendants, which I have not already stated.

Answers to Cross-interrogatories.

To the 1st cross-int'y. When I say that I am acquainted with the building of ships and steamboats, I do not mean that I am a practical shipwright, but that I know how a boat should be built; I have superintended a great deal of work on steamboats and vessels; I am not a practical mechanic.

To the 2d cross-int'y. I became acquainted with the sailing and navigation of steamboats and ships in Mobile; I have been engaged in the navigation of steamboats and vessels for about fourteen or fifteen years; I have been captain of steamboats for four years last past, previous to which, I was a pilot of the outer bar for about ten years.

To the 3d cross-int'y. There is a difference between steamboats built on the Ohio River and steamers built in New York. For sea service, those built on the Ohio is not so well fastened, nor are they built of so good materials.

To the 4th cross-int'y. A steamer built on the Ohio River for sea service, will not last more than eight or ten years, but those built in New York, if kept in good repair, will last twenty or twenty-five years.

To the 5th cross-int'y. The Oregon was built in New York; she is a stanch, strong, well-built steamer, and fitted for sea service. Ever since she has been built and arrived in Mobile, she has been running between Mobile and New Orleans, as one of the line of United States Mail Steamers, and she is still so employed.

To the 6th cross-int'y. The timbers of the Oregon's guards are white pine, about 4 X 5; the planking of the same is about 2 inches; they are as strong as those of any steamer of her size.

To the 7th cross-int'y. The tonnage of the Oregon is about four hundred and fifty; the power of her engine is one cylinder, 44 inches, ten feet stroke.

To the 8th cross-int'y. The wheel-houses of the Oregon are as good and as well built, as any steamer of her class fitted to ply between Mobile and New Orleans.

To the 9th cross-int'y. I will not undertake to say upon any given statement of facts what would be the precise result of a collision between two vessels, but I can state if the result would be great or insignificant, and can give, I think, the true character of the result. An apparently slight difference in the circumstances preceding the collision would produce a marked difference in the effect. For instance, the mere jibing of a foresail would be considered by some as a slight difference, yet an experienced mariner would anticipate a marked difference in the result from what it would be, did the foresail not jibe. It all depends upon what those slight differences are.

To the 10th cross-int'y. If two vessels approach each other with different velocities, the effect would be different from what it would be, had they approached each other with equal velocities, even tho' one of them should be stouter than the other.

To the 11th cross-int'y. If two vessels approaching each other come in collision, one going at the rate of six miles an hour, the other ten, the one going but six would be the most injured, especially if she is the weaker boat. In these answers, however, I take for granted the questions contemplate a collision occurring stem to stem.

To the 12th cross-int'y. If a collision occurs when the boats are heading in directly opposite directions, the weaker and smaller vessel will always suffer most.

To the 13th cross-int'y. In the case put or supposed in the 13th cross-interrogatory, the steamer would be likely to receive the most damage, because the siding of a steamer such as the Oregon, is extremely fragile; it being necessary on those boats, to make all the upper works light; a strong kick with one's heel, would perforate a hole anywhere above the upper rail. The collision occurring between two such boats (the Oregon and schooner), at an angle of from forty-five to sixty-five degrees, would not endanger the schooner much, because the blow would be a glancing one, and before the guard of the steamer could have struck the stem of the schooner, the force of the contact would have been much lessened by the action of the jib-boom and bowsprit of the schooner on the upper works of the Oregon; the damage to the Oregon, would be her siding torn away from the place of collision clear into the wheel, and probably kill those sleeping in the rooms just forward of the wheel-house. If the schooner was properly fastened, her only damage would be the loss of her jib-boom and bowsprit. The schooner would be the most easily turned around, but not until she would have found some resisting object in the siding of the Oregon.

To the 14th cross-int'y. If the facts were as stated in the 13th interrogatory, the effect of the collision would be to turn the head of the schooner from S. S. W. to N. W., or thereabouts.

It would not affect the course of the steamer, if her wheels were not stopped.

To the 15th cross-int'y. I think the weight or quantity of matter in the Oregon, when compared to that of the schooner, is at least 6 to 1.

To the 16th cross-int'y. The force or momentum of moving bodies is in proportion to their weight and velocity. A schooner loaded as the one contemplated in the 16th cross-interrogatory, would have her deck from eight inches to one foot from the water. The bowsprit at her stem, would be elevated above the water line about eighteen inches.

To the 17th cross-int'y. About one hundred out of one hundred and forty bales of cotton on the Wm. Ozman, must necessary have been on deck, and it must somewhat have encumbered her management.

To the 18th cross-int'y. If the Schooner Wm. Ozman was going down the Bay, with a stiff N. b. E. wind, heading S. S. W. or S. b. W. with her foresail on the starboard side, and while so going the foresail jibed over to the larboard side, and at the same time the helm was put to the starboard, the schooner would not turn from her course to the northwest, because putting the helm to the starboard would make the foresail instantly jibe back again. In fact, I don't

see how it is possible for the helm to be put to starboard, and the foresail jibe simultaneously. If the helm is put to the starboard, it is impossible for the foresail to jibe. Yet if the jibing occurs first, the schooner would immediately turn round to the westward until arrested by the helm's being put to the starboard, which would instantly bring her back to her original course.

To the 19th cross-int'y. As I have stated before, the jibing of the foresailing, and putting the helm hard to the starboard, could not have occurred simultaneously, because that position of the helm would have prevented the foresail from jibing; but if the sail had jibed before the helm was so managed, and just at the precise time a collision occurred under the circumstances set forth in this interrogatory, the schooner's head would be turned from the S. S. W. to the N. W. or thereabouts. I do not think that the steamer's guard could have come in contact with the stem of the schooner, because the jib-boom and bowsprit of the schooner, together with the headway of the steamer, would have sufficiently resisted the blow so as to stop, push back, and slew the schooner's stem to the northwest or north, whichever point the steamer was heading.

To the 20th cross-int'y. If it was possible for the collision to have occurred under the circumstances set forth in the 19th cross-interrogatory, or in other words, if it was possible for the guard of the steamer to come in contact with the stem and bowsprit of the schooner, the effect would certainly be to start and open the planking of the schooner at the stem; but I do not think it possible, for reasons already stated in my answer to the 19th cross-interrogatory.

To the 21st cross-int'y. The facility with which a schooner could be turned around, as contemplated in this interrogatory, entirely depends upon the angle of collision: the greater the angle the easier would the schooner be to turn around in a parallel direction with the steamer. In all the cases put in this interrogatory I think the steamer would turn the schooner, though with more or less difficulty, as I have just stated.

To the 22d cross-int'y. I have already fully answered this interrogatory, therefore I will refer to the 20th and 21st answers to cross-interrogatories of same numbers.

To the 23d cross-int'y. I do not recollect of having conversed with any one upon the subjects on which I have been examined. I dare say I may have conversed with some one in regard to the collision when it happened and probably since. But the persons with whom I conversed, and the particulars of such conversations, I have no recollection of.

To the 24th cross-int'y. I had not formed nor expressed an opinion in the case upon facts stated by Mr. Heirn or anybody else. My information is entirely derived from examination of the wound on the Oregon and my experience in navigation, &c.

To the 25th cross-int'y. I have never witnessed a collision occurring

under circumstances described in this case. I saw a steamer and a brig (her name was Croton) soon after a collision, but as I was informed of the facts by third parties, it would not amount to evidence in this case, as I am informed, therefore I will not state its particulars.

G. J. BLAKESLY.

Subscribed and sworn to the 10th July, 1854.

LEWIS S. LUDE,
Comm'r.

William F. James, Esq., who being first duly sworn, deposes and answers as follows, to the direct and cross-interrogatories hereto annexed.

To the 1st dr'ct int'y. I am captain of the steamboat Magnolia. I have been steamboating eighteen years on the waters of Alabama. I was a seaman seven or eight years, previous to my steamboating. I live in Mobile, and have resided there eighteen years.

To the 2d dr'ct int'y. I am acquainted with the building, sailing, and navigating steamboats and vessels.

To the 3d dr'ct int'y. I know the Steamer Oregon, commanded by Capt. R. A. Heirn, and plying between Mobile and New Orleans.

To the 4th dr'ct int'y. The timbers, planking, &c., of the Oregon's wheel-houses are of white pine. I am not certain, however, about the stancheons, but think they are white pine also. The stanchions are the uprights to which the planking is fastened. Their power of resistance is very slight; any one with a stick or hammer could perforate a hole anywhere in the wheel-houses. The size of the stanchions are about 3+3, and the thickness of the planks are about $\frac{3}{4}$ to $\frac{7}{8}$ of an inch thick.

To the 5th dr'ct int'y. If a collision were to occur under the circumstances set forth in this interrogatory, the steamer having an ordinary head of steam on and the schooner a stiff northerly breeze, the whole siding of the Oregon's wheel-house, aft of the place of collision would have been torn away. But the steamer could not have changed her course two points on either side of her track in fifty yards. When I speak of the effect of the collision on the steamer, I only consider the speed of the boats, and the angle of collision, because it is impossible for the circumstances set forth to eventuate in a like collision. In the first place, the steamer would not feel her helm in the first fifty yards; and in the second place, the schooner's helm being put hard down to port (for the foresail could not jibe if put to starboard), and the jibing of the foresail would have turned the stem of the schooner from south to within about four points of north in an instant; therefore, in my opinion, the collision could not have occurred with approaching forces, as contemplated in the interrogatory, but must occur by the schooner's running into the steamer. The heading of the boats, in the 5th interrogatory, as I understand it, is such that the angle of collision is about 45 degrees. Hence, I

have stated that its effects on the Oregon would have torn the entire siding of her starboard wheel-house.

To the 6th dr'ct int'y. The force of such a collision would have made a very serious injury upon the wheel-house of the Oregon; I do not think the collision could thus have taken place without great injury to the steamer's wheel-house.

To the 7th dr'ct int'y. I examined the injury that was done to the Oregon in consequence of the collision referred to; the wound was about twenty-five or thirty feet forward of the wheel-house, on the starboard side; it was about four or five feet in length; the part of the Oregon first touched by some part of the schooner, was between two stanchions, the one forward being broken outboard. It was utterly impossible for the injury to have been inflicted under the circumstances set forth in the 5th interrogatory, because the collision there is at about an angle of forty-five degrees, while the wound indicates the collision to have occurred when the schooner was heading at about four points of the Oregon's course.

To the 8th dr'ct int'y. The effect of a collision occurring under the circumstances set forth in the 8th interrogatory, would be the same as that caused by the fifth interrogatory, and my entire answer to that interrogatory I will give to the eighth; in both cases, the schooner would be turned around to a parallel direction with the steamer, but not until the jib-boom and bowsprit of the schooner would find sufficient resistance in the siding of the Oregon to have counteracted the impetus of the schooner.

To the 9th dr'ct int'y. The wound received by the Oregon indicates that the two came together while the steamer was passing, and the schooner turned around and run into the Oregon, when the schooner was heading not more than four points from the steamer's course, and that the headway of the steamer turned her from that position to a parallel course with the steamer, and dropped astern.

To the 10th dr'ct int'y. I have read the depositions of libellants, to wit, Browlin, Twiford, Augustus, and Swift, and in my opinion (judging from the wound inflicted on the Oregon), it was impossible for the collision to have occurred as they severally depose to.

If the collision had occurred as Mr. Twiford states, the damage to the Oregon would have been much more serious than it really was, for Mr. Twiford's testimony contemplates the collision to have occurred with approaching forces, and had it been so, "the steamer's starboard side, forward of the wheel-house by the gangway, striking the jib-boom of the schooner," the whole siding of the Oregon, from the place of contact to abaft the wheel-house, not only would have been torn away, but the persons sleeping in the rooms just forward of the wheel-house, would have stood in imminent danger of their lives. The wound I inspected on the Oregon, which had been inflicted in consequence of the collision in question, clearly indicated the wound to have occurred by the schooner's running into the steamer when she headed about four points of the Oregon's course.

This would be inevitable, by the jibing of the foresail; the foresail could not have jibed had the helm been put hard to starboard; the helm must have been put hard to port when the foresail jibed; and the bare jibing of the foresail, with a stiff northerly breeze rapping upon it, instantly turned the schooner to the position I have given her.

Mr. Brabner's answer, I think, will clearly show why, in my opinion, the deposition of Twiford, Browlen, Augustus, and Swift, are inconsistent with the injury to the Oregon. After reading the libel carefully, I am of the opinion that it also is as much inconsistent as the testimony of the witnesses above-named. I have read the answer of defendants, and the depositions of Tyson and Peterson; the first part of my answer to this interrogatory will, I think, fully corroborate the greater portion, if not all of their testimony; there may be a slight, immaterial variance; it can be found, however, by reference to their testimony, and my answer.

To the 10th dir'ct int'y. The length of the Oregon is about two hundred and twenty-five feet long.

If she was running north, she would proceed five or six hundred yards before she could be turned west.

In the first fifty yards she would not even feel her helm; after that she would turn probably from ¼ to ½ of a point in fifty yards. A point is one of the thirty-two divisions of the compass, being eleven degrees and fifteen minutes between each point. The Oregon is a low-pressure steamer. Low-pressure boats are much more difficult to turn than high-pressure.

The steamer Oregon has a single stiff shaft. A steamer with a single engine stiff shaft has to depend entirely upon her rudder when she turns around, but a double engine and shafts can turn clear around nearly in the same place.

To the 11th dr'ct int'y. If the steamer were to have a berth of thirty yards before turning to the westward, and she commenced turning westward when she was about fifty yards southwardly of the schooner, it would be impossible, with all the power of the engine and rudder, for her to turn so far west as to overcome that berth and run into the schooner, unless the schooner had turned her course toward the steamer.

The steamer Oregon will run from one hundred to one hundred and fifty yards before she can overcome a berth of thirty yards on either side of her course.

To the 12th dr'ct int'y. I am captain of the steamboat Magnolia, and have been so ever since she was built.

To the 13th dr'ct in'ty. I have nothing further that would benefit the defendants.

Answers to the Cross-Interrogatories.

To the 1st cross-in'ty. When I speak of being acquainted with building ships and steamboats, I do not mean that I have served an

apprenticeship as shipwright, or that I am a practical mechanic; but that I know how work ought to be done. I superintended the building of boats, and often the repairing, &c.

To the 2d cross-int'y. I became acquainted with the sailing and navigation of vessels at the north, previous to my coming to Mobile, about eighteen years ago, and I have ever since been engaged in the management and navigation of steamboats.

To the 3d cross-int'y. There is a difference between steamboats built for sea-service, in New York, and those built on the Ohio, for the same purpose. The hulls of those built in New York, are better built and stronger, and will last longer than those built on the Ohio.

To the 4th cross-int'y. A steamer built on the Ohio will last 6, 7, and 8 years, while those built in New York will last twice the time if kept in good repair.

To the 5th cross-int'y. The steamer Oregon was built in New York; she is a stanch, strong, and well-built steamer, and fit for sea-service. Ever since she was built, and arrived in Mobile, she has been running between Mobile and New Orleans as one of the line of United States mail steamers, and she is still so employed.

To the 6th cross-int'y. The size of the timbers of the Oregon's guards are about 4 + 5, and of oak; the planking of white pine, and about 1½ or 2 inches thick; about this, however, I am not sure, for I have never measured them. They are as well constructed and as strong as any steamer of the size built for the same purpose.

To the 7th cross-int'y. I don't know the Oregon's tonnage, nor the power of her engine.

To the 8th cross-int'y. Her wheel-houses are as well timbered and as strongly built and planked, as those of any steamer of her class, fitted to ply between Mobile and New Orleans.

To the 9th cross-int'y. I will not undertake to say what will be precisely the results of a collision between two vessels, upon any given statement of facts, but I can give the principal features of the result. I could tell what would happen, but might omit one thing that could happen. An apparently slight difference in the circumstances previous to the collision, would produce a marked difference in the result.

To the 10th cross-int'y. If two vessels approach each other with different velocities, the effect of a collision on each of them would be different from what it would be were they approaching with equal velocities.

To the 11th cross-int'y. If two vessels approaching each other come in collision, one going at the rate of 6 miles an hour, the other at the rate of ten, the one going at 6 miles would be the most injured providing the collision was stem to stem, but if otherwise it would greatly lessen the damage of one and increase that of the other; especially if the faster boat was a steamer and the other a schooner, &c., and if the collision was a glancing blow on the siding of the

steamer, when jib-boom and bowsprit would have a fair rake at the upper works, in that case the faster boat would receive the most injury.

To the 12th cross-int'y. I can not answer this interrogatory without knowing the kind of vessels, their disproportion, &c., and their position or heading at the time of collision.

The circumstances which would produce the most marked difference in the effects, would be the build of the boats and their position at the time of collision.

To the 13th cross-int'y. In the case put in the 13th cross-interrogatory, taking only the angle of collision, and the disproportion of size and speed in consideration, the injury to the Oregon would be greater than that to the schooner. The question requires me to take several things for granted, which in my opinion was impossible to occur.

In the first place, the Oregon could not have been turned four points or more in between fifty and one hundred and fifty yards; as I have testified before, she can't feel her helm in the first fifty yards, and it would require her to run from two hundred and fifty to three hundred yards before she could place herself in a position to come in collision with a schooner, at an angle of forty-five or sixty-five degrees, without the schooner herself would turn in towards the steamer by some means or other.

In the second place, I do not that at an angle of forty-five or sixty-five degrees, the steamer's guards could come in contact with the stem of the schooner, especially if the speed of the Oregon was twice as great as that of the schooner, because the greater velocity of the Oregon would act on the jib-boom and bowsprit of the schooner as with a lever, and turn the schooner around, before her stem would strike the guards of the steamer. Were this last possible, the injury to the schooner by a collision at an angle of 45 to 65 degrees would be greater than it would otherwise be. I do not think, however, that it would open the wood-ends of the schooner if she was properly fastened and sound. The schooner would be most easily turned around; in fact that would be the natural consequence of a collision occurring at an angle of forty-five degrees.

To the 14th cross-int'y. If the facts were as I have above stated them to be possible, in other words, were a collision to occur at an angle of from forty-five to sixty-five degrees, the steamer would turn the schooner's head to a parallel direction with her own course; and the schooner would drop astern. The collision would not perceptibly changed the course of the steamer, if she went on without stopping her wheels, and her speed was twice as great as that of the schooner.

To the 15th cross-int'y. The weight or quantity of matter in the Steamer Oregon compared to the Schooner Wm. Ozman, would be about 5 or 6 to 1.

To the 16th cross-int'y. The force or momentum of moving bodies are in proportion to their weight and velocity. A schooner of fifty-five tons, loaded with 140 bales of cotton, the deck would be about two or two ½ f't from the water. Her bowsprit at the stem would be about four and one half feet from the water.

To the 17th cross-int'y. A good deal of the 140 bales of cotton on the schooner would necessarily be on deck, and it would somewhat encumber her management.

To the 18th cross-int'y. If the Wm. Ozman, loaded with 140 bales of cotton, going down the Bay of Mobile, with a stiff north by east wind, heading S. S. W., or S. by W., with her foresail set on the starboard side, and while so going, her foresail jibed over to the larboard side, she would turn from her course round to the northwest; but had her helm been put to the starboard, the foresail could not have jibed; and if her foresail had jibed before the helm was put to the starboard, the putting of the schooner's helm to the starboard would have brought the foresail back, and she would regain her original position.

To the 19th cross-int'y. If, while the schooner was heading S. S. W., and at the very moment the sail jibes, and the helm is put to the starboard, a large steamer, going from 10 to 12 miles an hour, heading N. W., is crossing the bows of the schooner so near that the jib-boom of the schooner comes in contact with the fore part of the starboard wheel-house of the steamer, and the steamer's guard with bowsprit and stem of the schooner, the schooner's head would be suddenly turned from S. S. W. round to N. W.

To the 20th cross-int'y. If the schooner was reasonably stanch and strong, I do not think that the collision of the steamer's guards with the stem and bowsprit of the schooner, would lift and twist the schooner so as to have the effect of starting and opening the planking of the schooner at the stem to the water's edge; because if the steamer's guard and stem of the schooner were to come in contact at all, it would be a mere touch, for the headway of the steamer would so quickly turn the schooner around that it would be impossible for either to suffer much or any damage by such contact. The damage received by the schooner would be the strain put upon the bowsprit by the heading of the steamer in turning the schooner around, as I have before stated. If the schooner was sound, and her bowsprit properly fastened, the jib-boom would be about the only loss or damage the schooner would suffer. The foresail of the schooner having jibed, would also greatly aid the headway of the steamer in turning the schooner around, and thereby lessen the strain put upon the bowsprit.

To the 21st cross-int'y. In all the cases put in the 21st interrogatory, the schooner would be turned around to the same heading with the steamer.

To the 22d cross-int'y. The same effect would be produced, tho'

with more difficulty, if the courses of the schooner and steamer were such that at the moment of collision there was just a sufficient angle of the courses for the jib-boom and stem of the schooner to come in contact with the side and guard of the steamer; the jib-boom and bowsprit of the schooner, however, would have to perforate their way through the upper works of the Oregon, before the stem of the schooner and guard of the steamer could come in contact; there would be no difference in the effect upon the course of the schooner, for in all the cases put, she would be turned around to the same heading with the steamer, and then drop astern, but the facility and suddenness of turning the schooner around, would entirely depend on the angle at the instant of collision; the greater the angle, the easier the schooner would be turned.

To the 23d cross-int'y. I may have conversed with several persons in regard to the collision about which I have been examined, and opinions may have been expressed by such persons in my hearing, but the number of conversations, the persons who I have heard talk about it, and the opinions they may have expressed, I do not recollect, nor do I remember the time and place.

To the 24th cross-int'y. I had not formed or expressed an opinion upon facts stated to me by Capt. Heirn, or others interested on behalf of the defendants, before my examination before the commissioner in this case.

To the 25th cross-int'y. I never witnessed a collision, such as described in this case.

W. F. JAMES.

Subscribed and sworn to before me, 22d July, 1854.

LEWIS S. LUDE.
Com'r.

Captain Robert Otis, being first duly sworn, deposes and answers as follows, to the direct and cross-interrogatories hereto annexed.

To the 1st dir'ct int'y. I am now engaged in steamboating, and have been ever since 1836. I live in Mobile, and have resided there ever since that time.

To the 2d dir'ct int'y. I am acquainted with the building and navigation of ships and steamboats.

To the 3d dir'ct int'y. I know the Steamer Oregon, plying between Mobile and New Orleans, commanded by R. A. Heirn. I have known her ever since she has been built, and arrived in Mobile.

To the 4th dir'ct int'y. The material of the timbers, planking, &c. of the Oregon's wheel-house, are of white pine. The stanchions or uprights to which the planking is fastened are about 3+3 inches, and the planking is about $\frac{3}{4}$ of an inch in thickness. Her wheel-houses are well constructed, though their power of resistance to external pressure is very slight, they being built of the softest and lightest of materials.

To the 5th dir'ct int'y. In the case put in the 5th interrogatory, there is one thing which I think utterly impossible, for instance, the changing of the steamer's course two points in fifty yards. She can scarcely feel her helm in that distance. The foresail jibing by the helm being put hard to port (for it could not have jibed if put to starboard), would have suddenly turned the schooner around to about west-northwest, without any other assisting force, and if the collision occurred when the boats were in that position, viz., the Oregon north and schooner west-northwest, it would have been impossible for the guard of the steamer to come in contact with the stem of the schooner; for the headway of the steamer would have instantly turned the schooner around to her own heading, by pressing against the bowsprit of the schooner.

But in order for the stem of the schooner to come in contact with the guard of the Oregon, it would have been necessary for the angle of collision to have been within 65 degrees; and a collision occurring in that manner, would have torn away *away* the whole starboard wheel-house of the Oregon.

To the 6th dir'ct int'y. The force of such a collision, that is, the steamer having an ordinary head of steam on, and the schooner a stiff northerly breeze, the angle of collision being within 65 degrees, would have made a very serious wound on the Oregon; she would not have escaped without great injury.

To the 7th dir'ct int'y. I examined the injury that was done to the Oregon, in consequence of the collision in question. It was very slight. The wound was about twenty-five or thirty feet from the wheel-house, on the starboard side, a few feet forward of the officers rooms. It extended about four feet lengthwise, and about three feet in height.

It occurred between two stanchions, the one forward being broken outboard. I would estimate the damage to the Oregon, at not more than ten dollars, for a carpenter could have remedied the injury in two or three hours.

To the 8th dir'ct int'y. In answering the 8th interrogatory, I submit the same explanation of my opinion, which I gave in my answer to the 5th. The angle of collision contemplated in the 8th interrogatory is about the same, I think, as in the 5th interrogatory, therefore the injury to the steamer would be the same. The injury to the schooner would be the loss of her jib-boom, provided she was stanch and strong; for at an angle within forty-five degrees, the blow would have been more or less a glancing one, and if her bowsprit was properly secured, and the schooner sound, I do not think the leverage great enough to unship the bowsprit, nor do I think the blow sufficient to stave in the schooner's bows, as the whole pressure would be against the bowsprit. Under both state of facts, the heading of the steamer would have thrown the schooner around by pushing against her bowsprit.

To the 9th dir'ct int'y. The wound received by the Oregon, indicates that Oregon was passing, and that the schooner came into her when she (the schooner) was heading about west-northwest, or about six points of the Oregon's course. The shortness of the wound, and the forward stanchion being broken outboard, proves it conclusively to my mind.

To the 10th dir'ct int'y. I have examined the depositions of Twiford, Browlin, Augustus, and Swift, and, in my opinion, it was impossible for the collision (judging from the wound on the Oregon) to have occurred as they severally state. However, as they vary from each other, I will briefly show where I differ from each of them. Now, according to Mr. Twiford's testimony, the steamer came in contact with the schooner, the steamer's starboard side just forward of the wheel-house, by the gangway, striking the jib-boom of the schooner. He thereby places the boats at an angle of about forty-five degrees; if the collision had occurred at that angle, the jib-boom and bowsprit of the schooner would have raked down the upper works on the starboard side of the Oregon, tearing the whole siding of the officers' rooms, and probably killed those sleeping in them; and before the headway of the Oregon had turned the schooner around, the bowsprit would have gone clear into the wheel-house.

By referring to Mr. Browlin's testimony, it will be seen that he places the schooner at the time of collision heading between south and west. He says, that after the collision the headway of the steamer shoved the schooner around to the westward and northward. Now the schooner could not have been shoved to the westward, unless she was heading at the time of the collision somewhere between south and west. Now if the collision had occurred only one point south of west, the injury to the Oregon would have been much greater than what it was, tho' not so much as when the degree of angle would have been less.

Mr. Augustus, after stating that the foresail of the schooner jibed over, says, that the steamer struck the schooner on her larboard bow, forward of the fore-rigging, that the forward part of the steamer, just forward of the wheel-house, near the gangway, struck the schooner. It would have been impossible for the starboard side of the Oregon, at that place, to have struck the schooner on her larboard bow forward of the fore-rigging, unless the schooner was heading somewhere north of west when the Oregon was heading north, and after the jib-boom and bowsprit of the schooner had perforated their way through the upper works of the steamer, a stiff northwardly breeze rapping on the jibed foresail would have had that effect, and the headway of the steamer would finished turning the schooner to a course parallel with her own. If I understand Mr. Augustus, as I have above stated, I agree with him in the main facts of the collision. It is unnecessary for me to refer to particular parts of Mr. Swift's testimony, in order to point out what I deem impossible to have

occurred, from my examination of the injury to the Oregon; suffice it to say, that he gives the angle of collision from thirty to forty-five degrees, which in my foregoing answers I have treated as utterly impossible.

The averment of the libellants I also deem inconsistent with the injury to the Oregon. The forces of a collision, occurring as contemplated in the libel, would have been approaching; I need not therefore reiterate why I don't think the collision in question occurred with approaching forces.

I have read the defendant's answer, and the depositions of Tyson and Peterson, and agree with them in the principal facts stated by them; however, it would occupy too much space to show I agree with them severally, and to point out any immaterial facts with which my opinion might vary; therefore I will answer the balance of this interrogatory by subjecting their testimony to the various modifications I have already given.

To the 10th dir'ct int'y. The Steamer Oregon is from two hundred and twenty to two hundred and twenty-five feet long. The Steamer Oregon would run from four hundred and fifty to five hundred yards before she could be turned from north to west, providing she was steering due north at the time an attempt is made to turn her west. A steamer always has a tendency to sheer more or less from the true course; and a steamer such as the Oregon could be turned to west in less space and time if she were already inclined to the west. If her course was due north, she could not turn a single point in fifty yards, in fact she could not feel her rudder in the first fifty yards; and until she had started to turn, her movement towards the west would scarcely be perceptible. A point is one of the thirty-two equal divisions of the compass, containing eleven degrees and fifteen minutes.

The Steamer Oregon is a low pressure steamer; a low pressure boat is much more difficult to turn. The Oregon has a single engine, stiff shafts. The effect of *of* a stiff shaft on a steamer, is that they must depend entirely on the helm in turning around, while a steamer with a double engine and shafts can turn round within a few feet of her position by stopping one wheel, and thereby assisting the rudder in turning the steamer.

To the 11th dr'ct int'y. In the case put in the eleventh interrogatory, it would be impossible for the steamer, with all the power of her engine and rudder to overcome a berth of thirty yards, and run into the schooner, unless the latter turned around in towards the steamer. The Oregon would have to run from about one hundred to one hundred and fifty yards before she could be put thirty yards to the west of her track.

To the 12th dr'ct int'y. I am now captain of the Steamboat Cuba, and have been ever since she was built.

To the 13th dr'ct int'y. I know nothing more that would benefit the defendants.

Answers to the Cross-inter's.

To the 1st cross-int'y. I do not mean that I am a practical mechanic when I say I am acquainted — the building of ships and steamboats, &c., because I have never served an apprenticeship, but I know — works of that — should be done. I have superintended the building of steamboats, and repairs, &c.

To the 2d cross-int'y. I became acquainted with the navigation of ships at the north. I went to sea in 1825, and continued a seaman until 1836, when I arrived in Mobile. I have ever since been engaged in the management and navigation of steamboats.

To the 3d cross-int'y. There is a great difference between steamboats built on the Ohio and steamers built in New York for sea-service. Those built in New York are better built, stronger, and will last twice as long as those built on the Ohio.

To the 4th cross-int'y. The steamers built on the Ohio for sea-service will last from 6 to 8 years, while those built in New York will last from fifteen to twenty years, if kept in good repair.

To the 5th cross-int'y. The Steamer Oregon was built in New York. She is a stanch, strong, and well-built steamer, fitted for sea-service. Ever since her arrival in Mobile, she has been running between Mobile and New Orleans as one of the United States Mail Steamers, and is still so employed.

To the 6th cross-int'y. The timbers of the Oregon's guards are, I think, of oak, about four by five. The planking of the guards are white pine, about 1½ to two inches thick; they are well constructed and are as strong as those of any steamer of her size.

To the 7th cross-int'y. The tonnage of the Oregon is between four or five hundred. I do not know the power of her engine.

To the 8th cross-int'y. The wheel-houses of the Oregon are as well timbered and as strongly built and planked as those of any other steamer of her class, fitted to ply between Mobile and New Orleans.

To the 9th cross-int'y. I will not undertake to say, upon any given statement of facts, what will be precisely the result of a collision between two vessels, because such a thing would be impossible. The result I would give, in my opinion, *would* happen, but I might omit a good many things that might occur, which I could not foresee. Sometimes an apparently slight difference in the circumstances preceding the collision would produce a marked difference in the effect; but it would depend altogether upon what those slight differences are.

To the 10th cross-int'y. If two vessels approach each other with different velocities, the effect of a collision on each would be different from what it would be, were they approaching each other with equal velocities.

To the 11th cross-int'y. If two vessels approaching each other came in collision, one going at the rate six miles an hour, the other

at ten, the effect of the collision would depend on the kind of boats, and the angle of collision; were they two ships, or two steamers, and the collision occurring stem to stem, the boat going at six miles an hour would be the most injured; but if the fast boat be a steamer, and the slow one a schooner or a ship, and the collision occurred when the schooner headed anywhere between eight and *and* fourteen points (or thereabouts), from the course of the steamer, then the steamer would be most injured, because the jib-boom and bowsprit of the schooner would tear away the siding of the steamer, as I have before deposod.

To the 12th cross-int'y. The twelfth interrogatory I cannot answer, for want of certainty.

To the 13th cross-int'y. In the case put in the thirteenth interrogatory, I do not think it possible for the Oregon, in between fifty and one hundred and fifty yards to so change her course, as would make her come in collision with the schooner at an angle forty-five or sixty-five degrees. It would take her at least two hundred and fifty yards to turn four points, which is forty-five degrees; but if a collision occurred at an angle of forty-five or sixty-five degrees, the Oregon would be the most injured, because her whole siding would be exposed to the raking aft of the jib-boom and bowsprit of the schooner, while the blow being glancing, would merely cause the schooner to lose her jib-boom, if her bowsprit was properly secured, and the hull of the schooner sound and stanch; the headway of the steamer would turn the schooner around by pressing against the bowsprit, particularly if the speed of the steamer was twice as great as that of the schooner; the turning of the schooner would be accelerated by the jibing of the foresail, and thereby lessen the strain put upon the bowsprit; the schooner would be the easiest turned around.

To the 14th cross-int'y. If the facts were as stated in the 13th interrogatory, that is, if the collision occurred at an angle of from forty-five to sixty-five degrees, it would turn the head of the schooner to a parallel course with the steamer, and I don't think it would perceptibly affect the course of the steamer, if she went on without stopping her wheels.

To the 15th cross-int'y. The weight or quantity of matter in the steamer Oregon, compared to the schooner Wm. Ozman, as set forth in this interrogatory, would be about 6 or 7 to 1. However, about this, I am not certain, it is mere guesswork.

To the 16th cross-int'y. The force or momentum of moving bodies is in proportion to their weight and velocity. A schooner of fifty-five tons, loaded with 140 bales of cotton, would have her deck about two feet from the water, and her bowsprit at the stem would be elevated about 3½ or four feet.

To the 17th cross-int'y. A good deal of the cotton would be on deck; it would encumber her management somewhat.

To the 18th cross-int'y. If the schooner Wm. Ozman was going down the bay, having 140 bales of cotton on board, with a stiff N. by E. wind, heading S. S. W. or S. by W., with her foresail on the starboard side, and while so going, the foresail jibed over to the larboard, the schooner would instantly be turned around to the N. W., or thereabouts, but if the helm was put hard to starboard, that would make the sail jibe back again, before the schooner would turn in that manner. It is impossible for a foresail to jibe from starboard to larboard, heading as the schooner in this question was, when the helm is put to starboard, they cannot be simultaneously in action, because the helm would prevent the sail from jibing, by keeping the schooner in the proper position.

To the 19th cross-int'y. If such a state of facts as set forth 19th interrogatory were possible, the effect produced by the jibed foresail would be assisted by the headway of the steamer, and the schooner's head would be suddenly turned from S. S. W. to N. W.

To the 20th cross-int'y. Were it possible for the steamer's guard to come in collision with the schooner's stem, when the boats meet at an angle of 45 degrees, it would be a mere touch; the blow itself would be a glancing one, and the headway of the steamer would turn the schooner around too suddenly, by pushing against the bowsprit, to allow the stem and guards to come in contact. If the schooner was sound and the bowsprit properly secured, the schooner would give way in the water; in other words the turning the schooner around to the same heading with the steamer, would require much less force upon the bowsprit, than would be necessary to unship and carry it away.

To the 21st cross-int'y. In all the cases put in this interrogatory, the effect would be to turn the schooner around to the same heading with the steamer, though with more or less difficulty.

To the 22d cross-int'y. There would be no difference in the effect upon the course of the schooner in every case put; she would be turned heading the same way with the steamer, whatever that might be. The greater the angle of the courses at the time of collision, the quicker and easier would the schooner be turned.

To the 23d cross-int'y. I may have conversed with different persons about the collision in question, but when, how often, and to whom, I don't recollect. Facts may have been stated to me and opinions expressed, but I do not recollect these particulars.

To the 24th cross-int'y. I formed an opinion upon examination of the wound on the Oregon and may have expressed it. Capt. Heirn may have said something to me about the collision a good while ago. But I am certain they did not change the opinion I had formed upon examination of the wound.

To the 25th cross-int'y. I have never witnessed a collision similar to the one about which I have been examined.

ROBERT OTIS.

Subscribed and sworn to before me, the 25th July, 1854.

LEWIS S. LUDE.
Comm'r.

United States of America, to the Circuit Court of the United States, for the Fifth Judicial Circuit and Southern District of Alabama, to wit.

JOSEPH ROCCA and
FRANCOIS ROCCA
v.
STEAMER OREGON et al.

Pending in the above stated Court.

This is to certify that under and by virtue of the commission hereto appointed and directed to me from the above-mentioned Court, I, Lewis S. Lude, did cause to come before me, Scioto C. Burrell, George Blakesley, Robert Otis, and William F. James, witnesses named in said commission (Frederick Sheffild and Henry Toulmin not having made their appearance as notified), the said witnesses above stated to have appeared before me, to wit, S. C. Burrell, on the 1st day of June, 1854; G. I. Blakesly on the 10 July, 1854; William F. James on the 22 July, 1854; and Robert Otis on the 25 July, 1854, as is stated at the end of each deposition, being personally known to me to be the persons named as witnesses in said annexed commission. I proceeded to caution, and administer to them separately an oath, to wit, at the several dates above mentioned, to tell the truth, the whole truth, and nothing but the truth, in answer to the direct and cross-interrogatories also hereto attached; after which they did severally answer, as was above reduced to writing by me, and after carefully reading the same over to them, the subscribed the same (with the corrections made at their request), in my presence, on the day stated by me at the end of each deposition; and I do hereby certify that I am neither of kin or counsel for either party.

In witness whereof I have hereunto set my hand and seal, this the 5th day of September, 1854.

[SEAL.] LEWIS S. LUDE,
Commissioner.

United States of America, Circuit Court of the United States, for the Fifth Judicial Circuit and Southern District of Alabama.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMER OREGON et al.,
and
TURNER & TWIFORD
v.
THE SAME.

Commissioners to take testimony.

To Lewis S. Lude and James A. Kennedy, Esq's.

Know ye, that we in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Abraham Farris, Charles Williams, William Campbell, Joseph Adams, Peter Rosencrantz, on the part of the libellants in the above entitled causes, as witnesses in said causes pending in our said Court, wherein Joseph Rocca and Francis Rocca, and Turner & Twiford are plaintiffs, and Steamer Oregon et al. are defendants. And therefore we command you, or any one of you, that at such time and place, and times and places, that shall be most convenient to you, you do cause the said Abraham Farris, Charles Williams, William Campbell, Joseph Adams, and Peter Rosencrantz, to come before you, or either of you, and then and there examine them on oath as witnesses in the causes aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seal of any one of you, into our said Circuit Court, with all convenient speed.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, the second Monday of April, one thousand eight hundred and fifty-four.

Issued the 9th day of October, 1854.

Attest, GEO. E. HOLT.
Cl'k. C. C. Sou. Dis. Ala.

Circuit Court of the United States for the Southern District of Alabama. Appeals from the District Court transferred to the Circuit Court of the United States, to be held at Savannah, Georgia.

JOSEPH ROCCA and
FRANCIS ROCCA
v.
STEAMER OREGON et al.,
and
TURNER & TWIFORD
v.
THE SAME

Interrogatories to be propounded to Abraham Farris, Charles Williams, William Campbell, Jasper Adams, and Peter Rosencrantz, on the part of the libellants, in the above-entitled causes, to wit:

1. State, if you please, your name, age, residence, and occupation.
2. State whether you are acquainted with the sailing and navigating of vessels; if yea, how long you have been acquainted, and the nature of your experience?

3. Are you acquainted with the navigation of Mobile Bay, and with the kinds of vessels employed there, steamers and sailing vessels?

4. Do you know the steamer Oregon? what is her size? where was she built? how is she employed? what would be her speed in Mobile Bay, under her usual head of steam?

5. Did you know the Schooner Wm. Ozman, that was employed in Mobile Bay? what was her tonnage? was she a stanch, well-built schooner? did you know her at the time that she came in collision with the Steamer Oregon?

6. Did you see and examine the schooner Wm. Ozman after her collision with the steamer Oregon? if yea, state what damage was done her? what was the condition of her planking, stem, and timbers of her bows where the injury was done? was she raised and repaired? how were her bows repaired? was the same plank that were on her used for that purpose? what did the repairs cost?

7. What was the length of the bowsprit and jib-boom outside of the stem of said schooner? what was the length of the schooner from stem to stern?

8. What were the steering qualities of the Wm. Ozman? How did she compare with such vessels generally?

9. Suppose the Wm. Ozman was sailing down the Bay of Mobile, before a stiff northerly wind, under her foresail alone, dead before the wind, say heading south by west or S. S. W., sail out on the starboard side; now suppose the foresail jibes were to the larboard side, what movement of the helm would be requisite to counteract the jibing of the sail?

10. Suppose that coincident with the jibing of the foresail, the helm is put hard to starboard, would it counteract the jibing of the sail? Suppose immediately after the jibing of the sail, the jib-boom of the schooner comes in contact with the starboard side of the steamer, forward of the wheel-house, could the schooner have materially changed her course between the jibing of the foresail and the collision?

11. Suppose the schooner going down the Bay as before, and on the jibing of the sail, the helm is put hard to port, what would be the effect on the course of the schooner? This question is put with reference to the Schooner Wm. Ozman, under the load and circumstances before stated—if the witness knows how she would act under such circumstances—but if the witness never sailed on the Ozman, but knows her build, and sailing qualities of such schooners, then, with reference to similar vessels?

12. Could the Wm. Ozman, or a similar vessel, with a load of cotton, sailing before the wind under her foresail, as before described, be brought in stays, on the jibing of the foresail to the larboard side, and putting the helm hard to port?

13. If the schooner was sailing S. by W. when the sail jibed, and the helm was put hard to port, as last stated, how many points would

she turn towards the west before the sail would shiver? The sheet not being drawn aft, and after the shivering of the sail, would she come into the wind or fall off? State particularly what would be the conduct of such a vessel, under such circumstances?

14. If the hole made in the side of the steamer was four or five feet one way, by two or three the other, and the stanchion next forward of the hole in the steamer was broken outward, in what manner must the collision have happened, supposing the steamer, as before stated, to be going up the Bay, under her usual head of steam, and the schooner to be going down under her foresail, with a load of cotton? State particularly your views of the matter as a nautical man.

15. Have you ever witnessed collisions between sailing vessels and steamers? If yea, state how they happened, and the effects on the vessels.

16. If the Wm. Ozman was sailing down the Bay, as supposed, heading S. by west, and the steamer Oregon was going up the Bay, steering, say, N. by west, under her usual head of steam, and a collision takes place, the jib-boom of the schooner coming in contact, and entering the side of the steamer forward of the wheel-house, what would be the effect upon both vessels? State fully, according to your judgment and experience.

Interrogatories to be propounded by the libellants in above cases to Frederick Sheffield and Henry Toulmin, witnesses for the appellants, but whom they have failed to examine, to wit.

1. Please state your employment, and your age; what has been your experience in the navigating of ships or vessels?

2. Did you see the Oregon after her collision with the Schooner Wm. Ozman, in Mobile Bay, referred to in above cases? If yea, where was the hole made in her side? what was its appearance? and could you judge from it how the collision took place, that is, what direction the two vessels were sailing?

3. What is the tonnage of the Steamer Oregon? What that of the schooner?

If the schooner was going down the Bay, with a load of cotton, under a foresail alone, with a pretty stiff northerly wind, and the steamer coming up under a full head of steam—the schooner steering S. by W., and the steamer N. by W., or N. W. W., and a collision takes place, the jib-boom of the schooner coming in contact with the starboard side of the steamer, forward of the wheel-house, what would be the effect on both vessels? What would be the momentum of each? What would be most injured? Should the schooner be turned round?

4. State any other matter that you may know that may benefit the libellants.

K. B. SEWALL,
Proctor for Libellants.

The testimony taken on above interrogatories, and cross-interrogatories to be filed to them, to be used in both the cases stated in the caption.

K. B. SEWALL,
For Libellants.

Filed Sept. 27, 1854.

GEO. E. HOLT,
Cl'k.

Marshal's Return.

Received, September 27, 1854, and executed the same day, by serving Chandler Smith and Herndon, with a copy of these interrogatories.

C. M. GODBOLD,
U. S. M.
By WM. H. GASQUE,
D. M.

In the Circuit Court of the United States, Southern District, at Mobile.

JOSEPH ROCCA, &c.,
v.
STEAMER OREGON, &c.

TURNER and TWIFORD
v.
THE SAME.

Cross-Interrogatories.

1. Have you any interest in this suit, and will you be in any way benefited or injured by the result. Were you on either of the vessels at the time of the collision, and did you see the vessels immediately before, or at the time or soon after the collision?

2. Are you acquainted with the Mobile Bay, and do you know where the vessels generally anchor and lie, or where the shipping usually is during the winter and spring in the Mobile Bay? If yea, state whether it is on or nearer to the *east* or the *west* side of the Bay. State the width of the Bay at or near the shipping, and the distance of the shipping ordinarily from the *east* and the *west* side or shore of the Bay? On which side of the Bay is Dog River, and its bar?

3. Are you acquainted with the direction and course of the steamers going from Mobile to New Orleans, or coming from New Orleans to Mobile? Is the course and direction of the steamers nearer the east or west side of the Bay? State how near they are generally to the shore on the east side, to the shore on the west side? State how far below the city Dog River is, and how near the mouth of the river do steamboats generally run to go to and from New Orleans?

3. Please state what business you are engaged in, how long have you followed it, how long have you lived in or near Mobile, and state if you are acquainted with the building, and sailing, and navigating vessels, steamboats, or vessels? What vessels you have been on, and in what capacity?

4. Do you know the Steamer Oregon? how long have you known her? State if you know of what materials are the timbers, planks, &c., of the wheel-houses of said steamer built? how they are constructed, and what are their powers of resistance? What is the size of the timbers, and thickness of the planks of the wheel-houses?

5. If you think yourself of sufficient skill and experience in such matters as to enable you to answer, please state what would be the effect produced on the Oregon by a collision with a schooner of about fifty-five tons, occurring under the following circumstances. Suppose said steamer coming to Mobile, about two miles below Dog River, with an ordinary head of steam and stiff northerly wind. Suppose the schooner discovered the steamer coming up about two miles south of the schooner; the steamer steering about north; the schooner ascertaining the course of the steamer, changed to southwest so as to pass to the west of the steamer, when within about 50 yards of each other, the steamer changed her course about two points west, and in direction to cross the bows of the schooner, when the schooner put her helm hard down, but the foresail of the schooner (which was the only sail she had up), jibing, prevented her from going sufficiently to the east side to clear the steamer; the starboard wheel-house of the steamer striking the bowsprit of the schooner, and the guards of the steamer (near the wheel-house) striking the bowsprit of the schooner; the bowsprit of the schooner was unshipped and carried away, and the bows of the schooner stoved in. Suppose by such collision such schooner (she being reasonably stanch and strong) had her planks tore open to the water's edge, so that she shortly filled with water and sunk. What sort of a wound would have been inflicted by such a collision on the wheel-house of said steamer? Would it have been broken to pieces and greatly injured or not? In answering, consider that the schooner had a stiff northerly wind, and the steamer an ordinary head of steam.

6. Would the force of such a collision have made a serious or slight wound upon the wheel-house of the steamer, and could the collision thus have taken place and the steamer escaped with a slight or immaterial injury to her wheel-house? State fully.

7. Have you examined the injury that was done to said steamer by said collision? If so, state particularly the nature and extent of it, and state whether it is probable or improbable, possible or impossible, that the injuries could have been received in the manner before described.

8. Suppose the vessels were approaching as before described, before either varied, that is, suppose the schooner was sailing south

with a fair wind from the north, and with only her foresail set; suppose the steamer coming north, but so that they would have passed without collision; suppose the schooner suddenly turned, so as to throw her bowsprit in towards the steamer, causing it to strike the steamer at her wheel-house, at the place before stated, what would have been the effect of such a collision on the steamer, what on the schooner, and how would the wound that the steamer would receive correspond with the one she did receive; would the blow received render the state of facts first above set forth in the 5th cross-interrogatory, throw the schooner around or force her back; would a collision under the last stated facts (set forth in this cross-interrogatory), throw the schooner around or force her back?

9. Does the wound received by the steamer indicate that the two came together with approaching forces, or that, as the steamer was passing, the schooner turned in to her and was thrown around by the headway of the steamer?

10. Read the defendant's answer to the libel in these cases, and then read the depositions of Tyson and Peterson in these cases, and then say whether the same are consistent or inconsistent with the appearance of the wound inflicted on the Oregon? Please state fully the grounds of your opinion, and explain why you come to the conclusion you may arrive at?

11. What is the length of the Steamer Oregon; supposing her running north, how far would she have proceeded after an attempt to turn her west, before she could have turned west; how many points could she have turned in fifty yards? State what is a point? State whether the steamer is a low or high-pressure; whether a high or low-pressure is most easily turned; has the steamer a single shaft for each wheel, and what effect does a single shaft have in retarding or accelerating the turning of a steamer?

12. Suppose the steamer to have had a berth of about thirty yards before turning westward, and suppose she commenced turning westward when she was about fifty yards southwardly of the schooner, state if it would be possible, with all the power of her engines and rudders, to have turned so far west as to overcome that berth and run into the schooner, unless the schooner had turned her course towards the steamer. How far would the steamer have run before she could have overcome a berth of thirty yards; or, in other words, how far would she have run before she could have been just thirty yards to the west of her track?

13. Read the defendant's answers to the libels in these cases, and then read the depositions of Tyson and Peterson in these cases, and state whether the same are consistent or inconsistent with the appearance of the injury or wound received by the schooner. State fully the grounds of your opinion, and why you come to the conclusion you may have arrived at?

13. When did you see the schooner after the collision, and where was

she, how was she injured, and what part was injured; was she run into by the steamer, or did she run into the steamer? From the nature of the injury she sustained, would you say she run into the steamer, or the steamer run into the schooner? state the reasons for your opinion. Was the schooner new or old vessel? how old was she? Do you know what her repairs cost, of your own knowledge, and if not, how did you get your information? Have you spoken or conversed with the libellants, or any one representing the libellants, in relation to the collision, or your testimony, or the condition of the steamer or schooner?

14. Relate all you know that will benefit the respondents as fully as if you were specially interrogated thereto.

CHANDLER SMITH & HERNDON,
Sol'rs for Respondents.

Circuit Court of the United States, for the Southern District of Alabama.

JOSEPH ROCCA and FRANCIS ROCCA,
v.
STEAMER OREGON et al.
TURNER and TWIFORD
v.
STEAMER OREGON et al.

Depositions of Abraham Farris, Peter Rosencrantz, Charles Williams, Frederick Sheffield, and Henry Toulmin, witnesses on behalf of the plaintiffs in the above stated cases, whose depositions are taken by virtue of the annexed commission.

Abraham Farris, being first duly sworn, deposes, and answers as follows, to the direct and cross-interrogatories also hereto annexed.

To the 1st dir'ct int'y. My name is Abraham Farris; I am fifty years of age; I reside in Mobile; my occupation is seafaring; I have been master of vessels about twenty years.

To the 2d dr'ct int'y. I am acquainted with the sailing and navigating of vessels. I have been to sea ever since I was eighteen years of age. Some twenty years of that time I was mate and captain. I have made but few foreign voyages; my experience was nearly entirely acquired on the coasts of the United States and its harbors.

To the 3d dr'ct int'y. I am acquainted with the navigation of Mobile Bay; also with the kinds vessels employed there.

To the 4th dr'ct int'y. I know the Steamer Oregon; I don't know her well enough, however, to speak positively of her size, &c., but I think she is about four or five hundred tons burthen. She was built, I think, in New York; she is employed in running the mail between Mobile and New Orleans. I think the Oregon's speed under her usual head of steam, is about from 9 to 11 knots an hour.

To the 5th dr'ct int'y. I know the Schooner Wm. Ozman, that

was employed in Mobile Bay; her tonnage was between fifty or sixty tons. She was a stanch, well-built schooner. About a year or two before the collision took place about which I'm interrogated, she had undergone a thorough repairing, which made her as strong and as stanch as if she had been new. I knew her at the time of the collision between her and the Oregon.

To the 6th dr'ct int'y. I saw the Wm. Ozman about two or three weeks after the collision (i. e.) as soon as she was raised and brought to town. She was opened from her deck down below light water mark. About five feet of her bows were opened; her knight heads were broken. Her planking at the stem spread open, and her bowsprit and jib-boom were carried away. The Wm. Ozman was raised and repaired. I don't know whether the same planks were used to repair her bows or not. I have no idea as to what the repairs cost.

To the 7th dr'ct int'y. The length of the bowsprit and jib-boom of the schooner outside of the stem was about thirty-five feet; about this, however, I am not sure, as I never measured them.

The length of the schooner from stem to stern, was about sixty feet.

To the 8th dr'ct int'y. The steering qualities of the Wm. Ozman is as good as those of most any vessels of her kind.

To the 9th dr'ct int'y. If the Wm. Ozman was sailing under the circumstances set forth in the 9th interrogatory, when her foresail jibed from starboard to larboard, putting her helm hard to starboard could have a strong tendency to counteract the jibing of the foresail; in fact that is the only manœuvre that could effect such a result.

To the 10th dr'ct int'y. If putting the helm hard to starboard was coincident with the jibing of the foresail, it would not prevent the sail from jibing, because the helm would not have time to be felt; but after running some distance the foresail could be jibed back again; with a stiff northerly breeze she would proceed from 50 to 100 yards before the sail could be made to jibe back again. If immediately after the jibing of the foresail, the jib-boom of the schooner comes in contact with the starboard side of the steamer, forward of the wheel-house, the schooner could not have materially changed her course between the jibing of the foresail and the collision with the Oregon; I don't think she could have changed a point.

To the 11th dr'ct int'y. If the schooner was going down the bay, as before, and on the jibing of the sail the helm is put hard to port, it would bring her round to the westward instantly. In giving this opinion, I speak of it as a general principle of navigation, and include the Wm. Ozman as well as similar vessels. However, a vessel heavily laden will not perform the above action as quickly and suddenly as a lighter one.

To the 12th dr'ct int'y. The Wm. Ozman, nor no other similar ves-

sel loaded with cotton and sailing before the wind under her foresail, as before described, could be brought in stays on the jibing of the foresail to the larboard side, and putting the helm hard to port.

To the 13th dr'ct int'y. If the schooner was sailing S. by W. when the sail jibed and the helm was put hard to port, as last stated, she would turn from six to eight points towards the west before the sail would shiver, provided the sheet was not drawn aft. After the shivering of the sail she would full off. A vessel in that condition will come up and full off, and so on until her fore-sheet is drawn aft; if the latter is not done, she will drift to leeward and her helm would have no effect on her; she would, as I have before stated, continuously come up and full off.

To the 14th dr'ct int'y. If the steamer was going up the bay under her usual head of steam, and the schooner was going down under her foresail, with a load of cotton, and a collision ensues, by which a hole was made in the side of the Oregon, from 4 to 5 feet one way, and two or three the other, and the stanchion next forward of the hole was broken outboard, the collision must have occurred at an angle of about forty-five degrees; and the superior speed of the steamer turned the schooner around to a parallel course with the steamer, and thereby broke the stanchion outboard. I don't (think) the schooner would rake the Oregon more than 4 or 5 feet before she would be entirely arrested and slewed round, especially if the foresail jibed at the time.

To the 15th dr'ct int'y. I was captain of the schooner Princeton, when a collision occurred between her and the Florida, opposite the wharves of Mobile, in full day. We struck at an angle of about eighty degrees; and the steamer slewed the schooner around in an instant. My bowsprit being of soft white pine, and not very good at that, broke off outside of the stem. The only damage done to the Florida was the breaking one or two stanchions, forward of the hole caused by my bowsprit, and a small part of the outside planking. At the time I had all sail up, and had not time to take them in.

To the 16th dr'ct int'y. If the Wm. Ozman was sailing down the bay as supposed, heading S. by W., and the Steamer Oregon was going up the bay, steering say N. by west, under the usual head of steam, and a collision takes place, the jib-boom of the schooner coming in contact and entering the side of the steamer, forward of the wheel-house, the effect of a collision would depend on the angle and the power of the schooner's bowsprit. If the collision occurs as I have stated it to be my opinion in this case, and the bowsprit to be as strong as the Wm. Ozman's, the effect on the schooner would be to press upon her bows and carry away her jib-boom and bowsprit. The concussion between the boats would very much facilitate the occurrence of this effect, and the schooner would inevitably sink. The only reason why my schooner did not suffer in like manner, was entirely owing to the weakness of my bowsprit. I don't think the

collision would cause greater damage to the Oregon than described in the 14th interrogatory; because the schooner would have but little headway herself, if the foresail jibed, and the superior headway of the steamer would stop and slew her around before she could endamage the steamer much; the principal damage would be caused by the bowsprits breaking outboard when being slewed around.

Answers of Abraham Farris to the cross-interrogatories.

To the 1st cross-int'y I have no interest in this suit; nor will I be benefited or injured in any way by its results. I was on neither of the vessels at the time of the collision. I saw the schooner about two or three weeks after the collision; that is, as soon as she was raised and brought to town.

To the 2d cross-int'y. I am acquainted with the Bay of Mobile; and I know where the vessels generally anchor in the bay. The shipping is nearer the west side of bay; the bay at the shipping is from fifteen to twenty miles wide. The shipping lay from three to five miles from the western shore, and from ten to fifteen from the eastern.

Dog River is north; its bar is on the west side of the bay.

To the 3d cross-int'y. I am acquainted with the direction and courses of steamers coming from New Orleans to Mobile, or coming from Mobile to New Orleans. The course is nearer the western side; they keep to within three miles of the western shore. Dog River is about nine miles below the city. Boats generally run from 2½ to 3 miles from its mouth in going to or from New Orleans.

I am engaged in running a vessel in Mobile Bay; I have navigated Mobile Bay some twenty odd years. I have lived in Mobile upwards of twenty years.

I am not a shipwright, but have superintended the building of ships.

I am acquainted with the navigation of vessels, but not of steamboats. I have been master of eight or ten different vessels, and mate of as many more. I am now master of the Schooner Princeton, and have been for three or four years.

To the 4th cross-int'y. I know the Steamer Oregon and have known her ever since she first came here; I know nothing about the Oregon's construction.

To the 5th cross-int'y. If a collision occurred under the circumstances as detailed in the 5th cross-interrogatory (*i. e.*) if the collision occurs at an angle of 45 degrees, I don't think the damage to the steamer would be great, because the jibing of the schooner's foresail would take from her much of the headway, a stiff northerly breeze would give her, and thereby the schooner would be at the mercy of the great headway of the steamer, and while the schooner would be greatly endamaged, in fact sunk, the steamer would escape comparatively uninjured.

To the 6th cross-int'y. In answer to the sixth cross-interrogatory I submit my answer to the 5th.

To the 7th cross-int'y. I did not examine the Oregon after the collision took place; therefore I am unable to reason from the wound inflicted on her.

To the 8th cross-int'y. This interrogatory is so similar to the 5th (with the exception of the jibing foresail) that I will submit my answer to the 5th with this modification. That the damage to the Oregon might be greater in this case, as the foresail did not jibe; however, the difference between the two cases is so slight, that I can make no material difference. The damage to the schooner would be as great in this as in the case in the 5th cross-interrogatory. In both cases it would turn the schooner around. Not having examined the injury, I cannot speak of its correspondence with that which I have stated in my opinion.

To the 9th cross int'y. Not having examined the wound on the Oregon, I cannot answer this interrogatory.

To the 10th cross int'y. The answer to the 9th will apply to this interrogatory.

To the 11th cross int'y. A point is one of the 32 equal divisions of the compass. The Oregon is a low pressure boat. The balance of this interrogatory I cannot answer, as I am unacquainted with the management and navigation of steamboats.

To the 12th cross-interrogatory. The conclusion of my last answer applies to this interrogatory.

To the 13th cross int'y. The respondent's answer and the depositions of Tyson and Peterson all go to show that the collision occurred when the vessels headed within six points of each other (Peterson says three); had it so happened, the schooner would not have been injured as much as she was; if at three points, I don't think the schooner would have been injured at all, because the greater headway of the steamer would have merely shoved the schooner off.

To the 13th cross int'y. I saw the schooner about two or three weeks after the collision down at the ship-yard. Her bowsprit and jib-boom were carried away, her bows were opened and night head broke off. From the nature of the schooner's wound I would judge that they both met as I have before elsewhere stated. The schooner, I suppose, was eight or nine years old; about that, however, I am not certain. She had undergone a thorough repairing about two years before the collision, which made her a stanch and strong vessel. I don't know what her repairs cost. I have not spoken or conversed to any one about this case until I was informed that my testimony would be taken by the commissioner.

To the 14th cross int'y. I know nothing further that would benefit the respondents in this case. I might, however, here say, or as an addition to the answer to the 15th direct interrogatory, that my opinions in regard to the wounds inflicted on the steamer is neces-

sarily deduced from a similar experience in collisions of this kind. Although I could tell the probable effect on a schooner, I will not be as positive in regard to steamboats. My opinions are principally drawn from what occurred in a collision between the Steamboat Sea and Schooner Ann, of which I was mate. We were coming up to town on a dark night, and the steamer had caught up, and was in the act of passing us, when she crossed our bow. A collision ensued, when we went right square into the steamer, in the forward part of the wheel-house. The schooner had all sails up and a very heavy wind. The damage to the schooner, in consequence of the collision, was the carrying away of her jib-boom, and the unshipping the bowsprit, broke the stem and breast-hooks, broke her night heads, several timbers forward, broke off some of the deck planks and opened the outside planking nearly to the water's edge. The only damage to the steamer was the breaking of one wheel-arm, and injuring a little of the joiner's work outside. The steamer was not disabled, for she continued her regular business next day.

A. FARRIS.

Subscribed and sworn to before me the 13th Oct. 1854.

LEWIS S. LUDE,
Com'r.

Deposition of Peter Rosencrantz, witness on behalf of libellants in the annexed commission mentioned.

To the 1st dr'ct int'y. My name is Peter Rosencrantz; I am forty years of age, reside in Mobile, and am a sail lighterman.

To the 2d d'r'ct int'y. I am acquainted with the sailing of vessels, but am no navigator; I have been so employed for the last four or five years, in the Bay of Mobile.

To the 3d d'r'ct-int'y. I am acquainted with the navigation of Mobile Bay, and know the kind of vessels employed there, viz., steamers and sailing vessels.

To the 4th d'r'ct int'y. I know the Steamer Oregon; I do not know her size; I think tho' she is about five hundred tons burthen; she was built in New York; she is employed as one of the mail line steamers between Mobile and New Orleans; her speed in Mobile Bay under her usual head of steam, is about ten or eleven knots an hour.

To the 5th d'r'ct int'y. I knew the Schooner Wm. Ozman that was employed in Mobile Bay; her tonnage is about fifty-five tons; she was a stanch and well-built schooner, as much so, as any Baltimore schooner of her class; I knew said schooner at the time she came in collision with the Steamer Oregon.

To the 6th d'r'ct int'y. I examined the Schooner Wm. Ozman after her collision with the Oregon; her bowsprit, jib-boom, and night-heads carried away about three feet and a half below the deck; her bows were opened about six planks deep, or as deep as her night-head had been carried away; only one plank of her bow which was

opened was broken off; the planking was new; she was afterwards raised and repaired, and the same planks were bent back and used in repaired her bow; a new night-head, however, was put in; her repairs, to put her in running order again, cost between nine and eleven hundred dollars.

To the 7th d'r'ct int'y. The length of her bowsprit and jib-boom outside of her stem, was from twenty-four to twenty-eight feet long; I think the schooner's length from stem to stern is about sixty-five feet.

To the 8th d'r'ct int'y. The steering qualities of the Wm. Ozman was good; she was quick and sudden in her movements; she has as good steering qualities as any schooner of her class.

To the 9th d'r'ct int'y. If the Wm. Ozman was sailing down the bay, as supposed in the 9th interrogatory, it would be necessary to put the helm hard to starboard, in order to counteract the jibing of the foresail.

To the 10th d'r'ct int'y. If the jibing of the foresail and putting the helm hard to starboard were coincident circumstances, the latter would prevent the former from completely jibing; if immediately after the jibing of the foresail, the jib-boom of the schooner came in contact with the starboard side of the steamer forward of the wheel-house, I don't think the schooner could materially have changed her course between the jibing of the foresail and the collision; however, it would depend very much on the interval there was between the jibing and collision; in a clear and unobstructed place, it would require a space of at least two or three minutes, before the schooner would turn around to that point at which her sails would shiver; but under the circumstances stated in the 10th interrogatory, the superior speed of the Oregon would at once slew the schooner around to a parallel direction.

To the 11th d'r'ct int'y. If the schooner was going down the bay, as supposed in the 11th interrogatory, and when the sail jibed, the sail was put hard to port, it would only have the effect to accelerate the turning of the schooner around to a point at an angle with the wind of about ninety degrees, when the sail would shiver, and the schooner come up and fall off, until she could be brought back in a proper position; I speak of the Wm. Ozman as well as similar vessels.

To the 12th d'r'ct int'y. The Wm. Ozman, nor no other vessel with a load of cotton sailing before the wind under her foresail, as before described, could not be brought in stays, on the jibing of her foresail and putting her helm to port.

To the 13th d'r'ct int'y. If the Wm. Ozman was sailing S. by W. when the sail jibed and the helm was put hard to port, she would about three points before the sail would begin to shiver, providing the sheet was not drawn aft; after the shivering of the sail she would fall off. The Wm. Ozman, under such circumstances, would come up, shake, and drift until she was properly managed.

To the 14th dr'ct int'y. If the hole in the Oregon was as described

in this interrogatory, and the steamer was coming up the Bay with her usual head of steam, and the schooner going down under her foresail alone, and with a load of cotton, the collision must have happened at an angle of about forty-five degrees, when the speed of the steamer slewed the schooner around pointing to her own course, thereby causing the jib-boom or bowsprit of the schooner to break the stanchion forward of the hole outward.

To the 15th dr'ct int'y. About six or seven months ago I witnessed a collision between the Schooner Princeton and the Steamer Florida, opposite the wharves of Mobile. The Florida was coming up and the Princeton had just left the wharf; had all sails up. The schooner's bowsprit struck the chock of the steamer on the larboard side, knocking it out, and the schooner was slewed clear around in less than three seconds; the injury to the chock was the only damage done to the steamer, while the schooner's bowsprit and night-head were carried away.

To the 16th dr'ct int'y. A collision occurring as stated in this interrogatory would prove very serious in its effects on the schooner; the loss of her jib-boom, bowsprit, and night-head would be a natural consequence, and there would be great of her bows being more or less opened. As to its effects on the Oregon, it would entirely depend on the place in which the jib-boom and bows first entered. If they would first strike against a stanchion, the hole would extend to the next one aft of the hole, but if the jib-boom struck just forward of a stanchion, it would arrest the force of the schooner and slew her around, causing but little damage to the steamer.

Answers of Peter Rosencrantz to the Cross-interrogatories.

To the 1st cross-int'y. I have no interest in this suit, nor will I be benefited or injured in any way by its result. I was not on board of either of the vessels at the time the collision occurred. I did not the Oregon after the collision, but I saw and examined the schooner soon after she was raised. I had then bought her.

To the 2d cross-int'y. I know where the shipping is in Mobile Bay. The fleet extends two or three miles, and the greater portion is nearer the western shore. The Bay at the shipping is about twelve or fourteen miles; from the westernmost part of the fleet to the western shore is about four or five miles, and from the easternmost part of the fleet to the eastern shore about seven or eight miles. Dog River and its bar is on the western side of the Bay.

To the 3d cross-int'y. The course of the steamers going from Mobile to New Orleans and coming from New Orleans is generally north and south. The track is nearer the western shore. At certain points they run from two to four miles of the western shore. Dog River is about eight miles below the city. Steamers generally pass its mouth within about three or four miles, in going or coming to and from New Orleans. I am engaged in the lighterage business. I have followed

it about five years. I have lived in Mobile sixteen years or thereabouts. I am not a shipwright, nor am I acquainted with navigation on the high seas, but I am thoroughly conversant with the navigating and sailing vessels in Mobile Bay. I have been master of schooners. I quit the position three years, and am now retired on land. I keep myself in readiness in case any of my captains get sick; I then take the command. I generally attend to the business of my schooners.

To the 4th cross-int'y. I know the Steamer Oregon and have known her ever since she came out from New York. All I know of the Oregon's construction is that her outside planking above the guards is of white pine ¾ or 1 inch thick.

To the 5th cross-int'y. It is impossible for me to answer this interrogatory, not being informed where the jib-boom and bowsprit of the schooner entered the steamer. This is the only circumstance by which I could arrive at any degree of accuracy in the judgment I would form. The latter portion of my answer to the sixteenth interrogatory fully sets forth my views upon the subject. I must also say here that I am not acquainted with the materials of which the principal part of the Oregon's upper works are constructed, and therefore can form no judgment as to their proper powers of resistance.

To the 6th cross-int'y. I can state the injury the Oregon would receive by such a collision, not knowing where the bowsprit or jib-boom entered.

To the 7th cross-int'y. I did not examine the injury done the said steamer by the collision in question, therefore I cannot answer.

To the 8th cross-int'y. I cannot answer as to the wound received by the Oregon, for reasons already stated. The schooner would be slewed around in an instant, and taking in considera the speed of the steamer and that of the schooner, the jib-boom, bowsprit, and night-heads of the schooner would be carried away, and it is highly probable that her bows would be more or less opened by the wrench. The least angle of collision would be sufficient for the steamer to slew her around. I therefore answer, that it is my opinion that, under the state of facts mentioned, the schooner would be slewed around.

To the 9th cross-int'y. I didn't examine the steamer's wound, therefore I cannot answer.

To the 10th cross-int'y. The above answer applies to this interrogatory.

To the 11th cross int'y. The Oregon is about two hundred and forty feet long; if she were running north under her usual headway, when an attempt is made to turn her west, she would run five or six hundred yards before she could be turned west. In fifty yards, I don't think the Oregon could turn more than from one-half to one point. A point is one of the thirty-two divisions of a circle. The steamer is low-pressure. A high-pressure is more easily turned than

a low-pressure steamer, when the latter has a stiff shaft. The Oregon has but one engine and stiff shafts, and a boat in that condition will turn with much more difficulty than one with double engine and shafts.

To the 12th cross-int'y. If the steamer had had a berth of thirty yards before turning west, and she commenced turning westward when about fifty yards south of the schooner, I don't think she could turn so far west in that distance as to put her thirty yards to the west of the track. Before the Oregon could overcome that berth, (30 yards) she would have to run from one hundred to one hundred and fifty yards.

To the 13th cross-int'y. I have read the respondent's answer, and the depositions of Tyson and Peterson; I have no doubt but that the collision could have occurred as Mr. Peterson states, (i. e.) when the schooner was heading west by south; but as the respondent and Mr. Tyson states that the collision occurred when the schooner was heading at points somewhere north of west, I cannot but deem it altogether inconsistent with not only what I could infer from the wounds on the schooner, but absolutely impossible. The wind having but little or no action on the schooner's jibed foresail, and the greater speed of the Oregon would have caused the steamer to leave the schooner, her jib-boom sliding down the steamer's side, aft. I saw the schooner when she was raised; I had her raised; she sunk below Fowl River, about fifteen miles from Mobile. From the nature of the injury to the schooner, I would judge that she run into the steamer. I did not know her age. Her repairs cost between 900 and 1100 dollars. I may have conversed with different persons about the collision since it occurred, but the particulars of those conversations I do not now recollect.

To the 14th cross-int'y. I have stated all I know about this case.

PETER ROSENCRANTZ.

Subscribed and sworn to before me, this 28th day of October, A. D. 1854.

LEWIS S. LUDE.
Comm'r.

Deposition of Charles Williams.

Witness named in the annexed commission on behalf of the libellants.

To the 1st dr'ct int'y. My name is Charles Williams; I am thirty-one years of age. I reside in Mobile; my present occupation is stevedoring.

To the 2d dr'ct int'y. I am acquainted with the navigating of vessels; previous to my becoming a stevedore I was a seaman; that was about ten years ago; I had followed navigation for about eight years; during that time I served as sailor, mate, and lastly captain.

To the 3d dr'ct int'y. I am acquainted with the navigation of Mobile Bay, and am acquainted with the kinds of vessels and steamers employed.

To the 4th dr'ct int'y. I know the Steamer Oregon; she is about five hundred tons or a little over; she was built in New York, and is now employed as one of the mail line steamers between Mobile and New Orleans. Her speed in Mobile Bay under her usual head of steam is about twelve miles an hour.

To the 5th dr'ct int'y. I know the schooner Wm. Ozman, that was employed in Mobile Bay; she was fifty-seven tons burthen; she was a stanch, well-built schooner. I knew the Wm. Ozman at the time she came in collision with the Steamer Oregon.

To the 6th dr'ct int'y. I did not examine the schooner William Ozman after her collision with the Oregon, therefore I cannot answer this question.

To the 7th dr'ct int'y. The bowsprit and jib-boom of the schooner outside of the stem was about twenty-four feet. The length of the schooner from stem to stern was about fifty feet.

To the 8th dr'ct int'y. The Wm. Ozman steered remarkably well; very well indeed; she steered as well as any vessel of her class.

To the 9th dr'ct int'y. If the steamer was sailing as set forth in the 9th interrogatory, and her foresail jibes from starboard to larboard, it would be requisite to put the helm hard down to starboard, in order to counteract the jibing of the sail.

To the 10th dr'ct int'y. If the jibing of the foresail and putting the helm hard to starboard are simultaneous in their commencement, the latter will prevent the completion of the former. If, immediately after the jibing of the sail, the jib-boom of the schooner comes in contact with the starboard side of the Oregon forward of the wheel-house, the schooner could not have materially changed her course, between the jibing of the foresail and the collision, the helm having been put to starboard counteracting the effect of the jibed foresail.

To the 11th dr'ct int'y. If the schooner going down the bay as before, and on the jibing of the foresail the helm is put hard to port, her stem would be brought around to within five or six points of the wind; when the vessel would arrive at an angle with the wind of about ninety degrees, the motion to the north would diminish until the stem of the schooner pointed to within five or six points, as I have before stated. In this answer I speak with reference to the Wm. Ozman; she is quick in her movement and easily steered.

To the 12th dr'ct int'y. The Wm. Ozman nor no other vessel with a load of cotton sailing before the wind under her foresail, as before described, could be brought in stays on the jibing of her foresail to the larboard side and putting the helm to port.

To the 13th dr'ct int'y. If the schooner was sailing S. by W. when the sail jibed, and the helm was put hard to port, as last stated,

the schooner would turn six or seven points, or nearly west before her sail would shiver, the sheet not being drawn aft. After the shivering of the sail, she would continue to turn, tho' with greatly diminished speed, until her stem would point to within five or six points of the wind; she would then fall off and present her broadside to the wind, and in that position she would vary a little (*i. e.*) she would come up and fall off, and so on until the proper movement was performed by those on board.

To the 14th dr't int'y. If the hole made in the Oregon in consequence of the collision was four or five feet one way, by two or three the other, and the stanchion next forward of the hole was broken outward, the collision must have occurred at an angle of about forty-five degrees or less, and the superior speed of the Oregon slewed the schooner around to a course parallel with her own; thereby causing the stanchion to be broken outboard by the schooner's jib-boom or bowsprit. The Wm. Ozman was a very light boat, and the Oregon being so much heavier, it is highly probable that the collision occurred in that manner.

To the 15th dr'ct int'y. I witnessed one collision that is very similar to the one about which I have been interrogated. Some time in 1846 I was coming up the Bay to Mobile, on the Steamer Arkansas, when about ten or eleven o'clock at night, I saw a schooner coming down the Bay; her name I have now forgotten; when we discovered her it was too late to get out of her way; she come into us at an angle of about forty-five degrees, passing her jib-boom and bowsprit between two stanchions and over the boilers, between the boilers and the upper deck, and the steamer slewed the schooner around, and she dropped astern, her jib-boom or bowsprit broke the forward stanchion outward; this was all the injury done to the steamer. The schooner's bow was stove in and all her head stays carried away. We tied her up to the steamer and brought her to town.

To the 16th dr'ct int'y. If the collision occurred between the Wm. Ozman and Steamer Oregon, as stated in this interrogatory, the injury to the Oregon would be very light, while the injury to the schooner would be very serious. But a little of the Oregon's light upper works would be injured while the schooner's bow would be stove in, and there would be great danger of her night head and bowsprit being carried away.

Answers of Charles Williams to the cross-interrogatories hereto annexed.

To the first cross-int'y. I have no interest in this suit, and I will not be benefited or injured by the result. I was on neither of the vessels at the time of the collision. I saw the schooner Wm. Ozman soon after she was raised, before she was repaired.

To the 2d cross-int'y. I am acquainted with Mobile Bay, or know the shipping lay at anchor in the winter and spring. The place is

nearer to the western shore. The Bay at the shipping is about fifteen miles. The shipping from the western shore is about five miles. Dog River and its harbor is on the west side of the bay.

To the 3d cross-int'y. I am acquainted with the course of the steamers in the bay, going to New Orleans from Mobile or coming from New Orleans to Mobile. The course of the steamers is nearer the western side of the bay. It is about nine miles from the east and six miles from the west side of the bay. The width of the bay, however, entirely depends at what portion the width is sought to be ascertained; down at the lower fleet the bay is about twenty-five miles wide. When I state it to be fifteen miles wide, it is from Fowl River to Dog River Bar. Dog River is nine miles below the city, and steamers generally run within four or five miles of its mouth in going to and coming from New Orleans.

To the 3d cross-int'y. I am not engaged in any business at the present time. My occupation is stevedoring, and this is the idle season of the year, there being no business requiring stevedores going on. I have lived in Mobile seventeen years. I am acquainted with the sailing and navigation of vessels, but not steamboats. I am no shipwright by trade, but know how vessels ought to be built. I have been on ships, brigs, barges, and schooners, in the different capacities of sailor, mate, and captain.

To the 4th cross-in'ty. I know the Steamer Oregon. I have known the Oregon ever since she first came to Mobile. The planking of the steamer's wheel-houses are of white pine; the material of which the balance of her wheel-houses are constructed, I do not know, not having made the necessary examination.

To the 5th cross-int'y. If a collision occurred under a state of facts, as is recited in the fifth cross-interrogatory, the damage to the Oregon would be comparatively slight, taking in consideration the great difference between the steamer and schooner in weight and velocity. It is said that previous to the jibing of the schooner's foresail, the schooner was heading one point west of south, and the steamer two points west of north, making an angle of forty-five degrees. Now if the helm was put hard down upon the foresail's jibing, it would have counteracted the influence of the jibed foresail, and the angle would not have materially changed. The wheel-house of the Oregon would have arrested and carried away the jib-boom and bowsprit of the schooner, and slewed her around in an instant, the steamer's guards preventing the bowsprit from tearing her side while it would stave in and open the bows of the schooner.

To the 6th cross-int'y. I have already in my above answer satisfied this interrogatory.

To the 7th cross-int'y. I did not examine the injury to the Oregon, in consequence of the collision in question, and therefore I cannot answer.

To the 8th cross-int'y. The collision occurring under the state of

facts set forth in the 8th interrogatory, being so similar to the one stated in the fifth, I submit my answer to the fifth, as my response to this interrogatory. Under both state of facts, the schooner would be slewed around, as I have described in the answer to the fifth cross-interrogatory.

To the 9th cross-int'y. Not having examined the Oregon's wound, I cannot answer.

To the 10th cross-int'y. Not having examined the Oregon's wound in consequence of the collision, I cannot judge of the consistency or inconsistency of the documents referred to.

To the 11th cross-int'y. I do not know the length of the Oregon. I am not sufficiently acquainted with the navigation of steamboats to say how far the Oregon would run before she could be turned eight points to either side of her course. A point is one of the thirty-two equal divisions of the compass or a circle. The Oregon is a low pressure boat, and low pressure steamers is more difficult to turn than a high pressure. The Oregon has single stiff shafts, which retards her turning, when in a double engine and shaft steamer can be turned nearly without moving out of her own length.

To the 12th cross-int'y. I am not acquainted with the navigation of steamboats, therefore I cannot answer this question.

To the 13th cross-int'y. I have read the respondent's answers, and the depositions of Tyson and Peterson. From the wound on the schooner, I don't think it possible that the collision could have occurred under the facts testified to by the respondent and Mr. Tyson, for their answers and testimony tend to show that the collision occurred when the steamer was heading north, and the schooner somewhere north of west. In the first place a jibed foresail, with a northerly breeze, cannot bring a vessel in the position attributed, here, to the schooner; and in the next place, if it were possible for a collision to thus occur, the superior velocity of the steamer would leave the schooner behind, sliding her jib-boom down the side of the steamer, thereby rendering the injured condition of the schooner inexplicable. Mr. Patterson places the schooner heading west by south, or one point south of west, which is somewhat an approximation to my opinion, but even then, I do not believe that a collision occurring as he says, could cause the injury suffered by the Ozman. The staving in of the schooner's bows, was caused by the contact with steamer's guards, and if the schooner had been heading within nine points of the Oregon's course, no such damage would have been inflicted on the schooner. I saw the schooner after she was raised and brought to the wharf, but before she was repaired. Her jib-boom, bowsprit, and night-head, were carried away, her bows stove in and opened; whether she run into the steamer or the steamer run into her, I cannot tell, not having witnessed the collision. The Schooner Wm. Ozman, was about six years old; I do not know what her repairs cost; I do not recollect of ever speaking to the libellants or any one

representing them, in relation to my testimony or the injury to the schooner or steamer.

To the 14th cross-int'y. I have stated in my testimony, above reduced to writing, all I know in reference to the collision or the vessels.

CHARLES WILLIAMS.

Subscribed and sworn to before me this 2d Nov'r, 1854.

LEWIS S. LUDE,
Comm'r.

Deposition of Capt. Frederick Sheffield to the Interrogatories hereto annexed.

To the 1st dr'ct int'y. My present occupation is that of inspector for the board of underwriters. I am fifty-nine years of age. My occupation for the last fifty has been such to connect me more or less with steamboats and vessels. I have served in all capacities on board of ships and steamboats, except engineer.

To the 2d dr'ct int'y. I saw the Oregon after her collision with the Schooner Wm. Ozman. Her hole was on the starboard side, forward of the wheel-house. I cannot judge from said hole what directions the two vessels were sailing when they struck.

To the 3d dr'ct int'y. The Oregon is a boat of between three and four hundred tons. The Ozman a schooner of from fifty to sixty tons burthen. From the facts stated in this interrogatory, I cannot form any opinion, in other words, the actual effects might not justify my conclusion. The difference in the momentum of the vessels would be about seven to one in favor of the steamer. The schooner would be the most injured; the particulars of the injury I do not feel competent to tell. The schooner would be turned around by the headway of the steamer.

To the 4th dr'ct int'y. The occurrence took place so long ago that my recollection of the particulars fails so that I will not hazard any opinions.

Answers of Capt. F. Sheffield to the Cross-Interrogatories.

To the 1st cross-int'y. I have no interest whatever in this suit. I was not on either of the vessels at the time of the collision. I saw both the Oregon and schooner soon after the collision.

To the 2d cross-int'y. I am acquainted with Mobile Bay, and know where the vessels lie in the winter and spring. The anchorage is nearer the western shore of the Bay. The Bay at the lower anchorage is about twenty miles wide, the upper one is about ten. The lower anchorage is from two to three miles from the western shore, and the upper is from ½ to 2 miles. Dog River and its bar is on the west side.

To the 3d cross-int'y. I am acquainted with the course of steamers going to or coming from New Orleans. They generally pass through the centre of the upper anchorage and to the west of the lower one. Dog River is about ten miles below the city. Steamers generally run from 1½ to 2 miles from its mouth. I have been inspector for some twenty years; have lived in Mobile for near forty years. I am acquainted with the building and navigating of ships and steamboats, though I am no shipwright. I have been on a great many different vessels and steamboats ever since my infancy, and have filled every capacity but that of engineer.

To the 4th cross-int'y. The planking of the Oregon's wheel-houses are of white pine, and I think that their main stanchions are of oak. I have known the Oregon ever since she came out to Mobile. The stanchions are about four by four inches, I think of white pine, and the planking is about an inch thick. The siding between the main stanchions has not much power of resistance; the main or course stanchions are of oak, of about two inches square, and are very strong.

To the 5th cross-int'y. I do not feel myself competent to answer the 5th cross-interrogatory.

To the 6th cross-int'y. My answer to the former question I submit as my answer to this.

To the 7th cross-int'y. I saw the injury to the Oregon soon after the collision occurred, but have not a sufficient recollection to enable me to describe it, or remember its peculiar character.

To the 8th cross-int'y. I don't feel myself competent to describe the effect of a collision occurring under the state of facts here set forth. In both cases, however, the schooner would be turned around.

To the 9th cross-int'y. I don't recollect the wound on the Oregon enough to enable me to answer.

To the 10th cross-int'y. The above answer applies to this interrogatory.

To the 11th cross-int'y. I think the Oregon is over two hundred feet long. If the Oregon was going and an attempt is made to turn her west, she would proceed two or three times her length before she could be turned west; she could not turn more than two or three points in fifty yards; a point is one of the thirty-two equal divisions of a circle. The Oregon is a low pressure boat, and more difficult to manage than a high pressure, because the latter have double engine and shafts; the Oregon has stiff shafts and cannot be turned as quickly, because both wheels must be in motion at the same time.

To the 12th cross-int'y. If the schooner remained stationary when the attempt is made to turn the steamer westward, it would be a very narrow escape if the Oregon did not strike the schooner; but if the schooner was at her usual speed, the collision would be inevitable, the steamer running into the schooner; the steamer would have to run about twice *twice* her length before she could be placed thirty yards to the west of her tract.

To the 13th cross-int'y. I cannot form any opinion as to the consistency of the documents referred to, with the injury to the Ozman, from reading them—therefore, I cannot answer; I saw the schooner at the wharf soon after the collision; the particulars of her injury I do not remember; her bowsprit was wrenched, which caused her bows to open at the stem; the schooner, I think, was some five or six years old; I do not know what her repairs cost; both parties have conversed with me about the collision and my testimony, the particulars of which conversations I do not recollect.

To the 14th cross-int'y. All that I have stated as facts in the above testimony in regard to the injuries and build of the boats, are only impressions, having taken no memorandum upon the examination.

FRED. SHEFFIELD.

Deposition of Capt. Henry Toulmin, witness on behalf of libellants.

To the 1st d'r'ct int'y. I am one of the marine and local inspectors for the Port of Mobile; I am forty years of age; my experience in the navigation of ships and vessels has been as mate and captain, for about twelve years.

To the 2d d'r'ct int'y. I have no recollection of seeing the injury to the Oregon, in consequence of the collision in question—therefore, I cannot answer this question; I saw the break on the schooner, but that is not sufficient to enable me to answer.

To the 3d d'r'ct int'y. I don't know the tonnage of the Oregon, nor do I of the Wm. Ozman; if a collision occurred as stated in this interrogatory, the effect on the schooner would be to carry away her night-heads, jib-boom, and bowsprit, open her wood-ends forward, to below the water line, when she would fill with water and sink; the damage to the Oregon would depend on the number of stanchions within the reach of the bowsprit when the schooner would be in the act of swinging around; the headway of the steamer producing that effect; the schooner in this case would be much more injured than the Oregon; the immense difference in the weight of the boats would much endanger the schooner, wherein the steamer could escape comparatively unharmed.

To the 4th dr'ct int'y. A steamboat is always considered as having a fair wind, being so much easier managed than a sailing craft. If the Oregon had backed her wheels in time, she would have lost her headway in about four or five revolutions of her wheels, or before she could travel more than twice her length, and thereby obviate the infliction of the injury to the schooner and herself. If she received an injury under these circumstances, it would have been very immaterial.

Answers of Capt. Toulmin to the Cross-Interrogatories.

To the 1st cross-int'y. I have no interest in this suit, and I will not in any way be benefited or injured by its results. I did not see

the Oregon before she was repaired, but saw the schooner a day after she was brought to the city, and before she was repaired.

To the 2d cross-int'y. I am acquainted with Mobile Bay, and know where the shipping lay in winter and spring. It is nearer the west side, or rather from the centre of the bay westward. I do not know the width of the bay. The shipping from the western side sometimes lay about three miles, and from that to about the centre of the bay. Dog River and its bar is on the western side.

To the 3d cross-int'y. I do not know the exact course of the steamers going and coming to and from New Orleans; but I know it is nearer the western side of the bay. After they pass Dog River Bar they run about two miles from the western side, and from eight to ten miles at that place from the eastern. Dog River is about ten miles below Mobile, by water; and steamers generally run about two miles from its mouth. I am now engaged as Marine Inspector, and have been for eleven years; and about two years Inspector for the United States. I have lived in Mobile for about twenty years. I am acquainted with the building, sailing, and navigation of steamboats, ships, and vessels. I have been captain of the steamboats "North Star," "Victoria," "Roanok," "General" "Sumpter," "Bonnets of Blue," and some others. I have also been captain of the schooners "Mobile," "Triumph," and some others. The two former schooners plying from New York to Mobile, and from Mobile to New Orleans; besides other voyages which I made to Europe as mate.

To the 4th cross-int'y. I have known the Steamer Oregon ever since she first came here. The planking of the wheel-house of the Oregon is of white pine; but I do not know the material of which the remainder of her wheel-house is constructed; I think tho' they are of oak.

To the 5th cross-int'y. The interrogatory says, that when the schooner discovered that the steamer was steering north, she changed her course to southwest; this of itself is enough to make the schooner jibe in spite of the efforts of those on board; therefore, she would jibe before it is said she would jibe in the interrogatory. The effect on the Oregon of such a collision as is described in this question, would be comparatively small. I submit my answer to the 3d direct int'y as a response to this.

To the 6th cross-int'y. I do not think that a collision occurring as stated in the 5th int'y would cause a serious wound on the Oregon, the steamer being struck in the place and manner as stated.

To the 7th cross int'y. I did not examine the injury done to said steamer in consequence of said collision, therefore I cannot answer.

To the 8th cross-int'y. The effect on the Steamer Oregon and on the Schooner Ozman in consequence of a collision, occurring as here set forth, would entirely depend on the velocity of the boats. The schooner having a fair wind does not convey the idea of her speed; because a fair wind may just give her steerage way, and in that case

no damage could possibly occur, without it was caused by the velocity of the steamer. Owing to this defect in the question, I cannot answer it. Under both state of facts the schooner would be turned around, especially if the steamer was under her usual headway.

To the 9th cross-int'y. Not having examined the wound on the Oregon, I cannot answer.

To the 10th cross-int'y. My answer to the above applies also to this.

To the 11th cross-int'y. I do not know the Oregon's length; and not knowing how she answers her helm, I cannot say how far she would proceed before she could be turned from north to west, nor how much she could turn in fifty yards. A point is one of the thirty-two equal divisions of the compass or a circle. The Oregon is a low-pressure boat, and has but a single engine, and stiff shafts. A double-engined steamer can turn much quicker than a single one.

To the 12th cross-int'y. The first portion of my eleventh answer applies to this. Also, the turning of the steamer would depend very much on her speed at the time the attempt is made to turn her west.

To the 13th cross-int'y. My knowledge of the schooner's injury is so restricted as not to enable me to judge of the consistency or inconsistency of the documents referred to, with the wound in question. I saw the schooner after she was raised, and before she was repaired, at the wharf, in Mobile; she was injured forward; her bowsprit was carried to one side, and her bows were opened to below the waterline; however, my recollection is very indistinct, and I cannot decribe the particulars of the injury, therefore I cannot testify as to which run into the other. It might be either way. I do not know what her repairs cost, nor do I know what her age is. I have not conversed with any one as to my testimony, except with the commissioner, who informed me that I was included among the witnesses in the annexed commission.

To the 14th cross-int'y. I know nothing further.

H. F. TOULMIN.

Subscribed and sworn to, this 9th Nov'r, 1854.

LEWIS S. LUDE,
Com'r.

Comm'rs Certificate.

United States of America. To the Circuit Court of the United States, for the Fifth Judicial Circuit, and Southern District of Alabama. Viz.,

JOS. ROCCA and
FRANCIS ROCCA, and
TURNER and TWIFORD,
v.
STEAMBOAT OREGON et al.

This is to certify that, under and by virtue of the commission hereto annexed, and directed to me from the above-mentioned Court, I,

Lewis S. Lude, did cause to come before me, Abraham Farris, Peter Rosencrantz, Charles Williams, Frederick Sheffield, and Henry Toulmin, witnesses named in the said commission, on behalf of the libellants, on the day and date respectively set forth at the end of each deposition, and at my office, in the City of Mobile. And the said witnesses above-named being personally known to me as the identical witnesses set forth in said commission, I proceeded to caution them and administer to them, separately, an oath, to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories hereto annexed; after which they did severally answer, as was above reduced to writing by me; and after carefully reading over the same to them, they subscribed the same in my presence, on the days and at the place aforesaid. I do hereby also certify, that I am neither of kin or counsel for either party. In witness whereof, I have hereunto set my hand and seal, this the ninth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

LEWIS S. LUDE,
Commis.

[SEAL.]

William Campbell and Joseph Adams are not to be found in this county. I learn that they are in Texas.

LEWIS S. LUDE,
Commis.

And at a regular term of the Circuit Court aforesaid, begun and held on the second Monday of April, A. D. 1855, to wit, on the 21st day of April, 1855, the same being a day of said term, the following order was made in this cause, viz.:

J. and F. ROCCA
v.
STEAMER OREGON.

The order heretofore made in this cause, transferring the same to the Circuit Court of the United States, at Savannah, is hereby rescinded, and the said cause being submitted to the Court, a decree is rendered pro forma, the presiding Judge having been of counsel for the defendants, affirming the judgment that was rendered in this case, on the 6th of January, 1851, for six thousand five hundred and ninety-nine $\frac{64}{100}$ dollars, with costs of suit, from which decree an appeal is prayed, which is hereby granted. By the consent of parties it is ordered, that the evidence taken in one or either of the causes be used in the other. The decree rendered in this cause is, by consent of the parties, and it is ordered by the Court, that the appellants execute bond, with security, for double the amount of the decree, within thirty days from the date hereof, to be approved by the Clerk, by consent of the parties.

Appeal Bond.

United States Circuit Court, Southern District of Alabama.

Know all men by these presents that we, Roger A. Heirn, Robert Geddes, Abraham Wolf, and Charles Le Baron, are held and firmly bound unto Joseph Rocca and Francis Rocca, in the sum of thirteen thousand one hundred and ninety-nine dollars and twenty-eight cents; to be paid to the said Joseph Rocca and Francis Rocca, their certain attorney, or attorneys, executors, administrators, or assigns, for the faithful payment whereof well and truly to be made, we hereby bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly, and severally, firmly by these presents. Sealed with our seals, and dated this 15th day of May, A. D. 1855.

The condition of the above obligation is such, that whereas the above-named Joseph Rocca and Francis Rocca, heretofore, to wit, on the 6th day of January, A. D. 1851, by a decree of the District Court of the United States, for the Southern District of Alabama, at Mobile, recovered judgment against the above-bound Roger A. Heirn as master, and part owner of the Steamer Oregon, for the sum of six thousand five hundred and ninety-nine dollars and sixty-four cents; which said decree and judgment was afterwards, to wit, on the 21st day of April, A. D. 1855, by the Circuit Court of the United States, for the District aforesaid, affirmed; and from which said decree and judgment of the Circuit Court aforesaid, the said Roger A. Heirn hath prayed an appeal to the Supreme Court of the United States, which is granted upon the execution of this bond.

Now therefore, the condition of this obligation is such, that if the above-bounden Roger A. Heirn shall prosecute his said appeal to effect, or failing therein shall pay all such damages and costs as may be awarded against him by reason of the same, then the above obligation, otherwise to be and remain in full force and effect.

R. A. HEIRN, [SEAL.]
R. GEDDES, [SEAL.]
AB'M WOLFF, [SEAL.]
C. LE BARON, [SEAL.]

Filed May 15, 1855, and approved.

GEO. E. HOLT,
Cl'k.

Clerk's Certificate.

I, George E. Holt, Clerk of the Circuit Court of the United States, for the Southern District of Alabama, do hereby certify, that the foregoing two hundred and fifty-six pages, numbered from 1 to